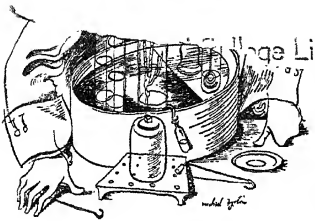
Joseph Priestley



Priestley, like Faraday, owes his fame to chemical discoveries made in his leisure hours as a relaxation from writing sermons and political broadsheets. His first success as a practical chemist was the accidental discovery of soda water. While living next door to a brewery in Leeds, curiosity led him to investigate the process of brewing. In doing so, he found that carbon dioxide gas, which is produced during the brewing of malt beverages, could be dissolved in ordinary water to make "aerated water". The success of this experiment set him on his chemical career and he acquired a renown which matched his considerable reputation as a theologian.

His appointment as librarian to Lord Shelburne at Bowood in 1773 gave him ample time and opportunity to develop his scientific hobbies and his most important work was done during the following eight years. In this period he discovered, prepared and studied a vast number of gases—all of them highly important—including oxygen, ammonia, nitrous oxide (the "laughing gas" of the dentist's surgery), hydrogen sulphide, hydrogen chloride and sulphur dioxide. Priestley's inventive genius was of a type that is typically British. As a practical experimenter he has had few, if any, equals, and the gases he discovered have proved of immense scientific and commercial importance. He died in 1804 in Pennsylvania, U.S.A.

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HONORARY EDITOR: STEPHEN KING-HALL EDITOR: SYDNEY D. BAILEY

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THE HANSARD SOCIETY

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HANSARD SOCIETY NEWS

By Stephen King-Hall
Chairman of the Council and Honorary Director

THERE are no spectacular developments to report this quarter although at least two questions are rising above the horizon of our activities which may lead to important expansions in our work.

One of these is the growth of a desire amongst German politicians to see in Germany a society capable of undertaking work for the advancement of parliamentary government comparable to that which is done by the Hansard Society. As might be expected—and this should interest our members—these German politicians are those who, having visited the United Kingdom during the past two years under the auspices of the Hansard Society, have seen our work at first hand. The extent to which the Hansard Society can assist in this German development is now under discussion by the Council.

The work of the Society is continuing to increase to such an extent that it was considered advisable to strengthen the Council by inviting the following gentlemen to become co-opted members until the next Annual General Meeting: they accepted the invitation.

The Rev. Gordon Lang, M.P. for Stalybridge and Hyde.
Sir Stanley Reed, K.B.E., M.P. for Aylesbury, 1938-50.
Sir Norman Scorgie, C.V.O., C.B.E., Controller of His Majesty's Stationery Office, 1942-9.

An interesting episode in our membership department was the receipt of a note from Mr. George Bernard Shaw (already a member of the Society) expressing a desire to pay his annual membership dues in the form of a seven-year covenant. When this covenant ends Mr. Shaw will be 100 years old, and the Council have informed him that he will then be invited to become an honorary life member. We shall look forward to offering him a reception on that occasion.

Our publications department is as active as lack of working capital allows. Since the last issue of *Parliamentary Affairs* we have published two new pamphlets for schools, *Questions on Parliament* and *Answers to Questions on Parliament* by K. Gibberd. These pamphlets cost 6d. each (4d. to members of the Society). We should like to hear of anyone who, without the use of the "crib" but with the help of books, is able to answer 95 of the 100 questions correctly.

Japanese and Italian editions of *Our Parliament* have now been published bringing the total of all editions of this classic to 53,000, made up as follows: English 23,000, German 7,000, French 8,000, Spanish 5,000, Japanese 5,000, Italian 5,000.

Two additions have been made to the series of select bibliographies on parliamentary government: they relate to Scandinavia and Ceylon, and cost 3d. each.

The Parliament of France by D. W. S. Lidderdale is now in the press and will be published in September. The provisional price is 12s. 6d. (less 33⅓% to members), and advance orders can be accepted.

The Council has reluctantly decided not to proceed with the preparation of a book or gramophone record commemorating the official opening of Hansard House last December. Although many members expressed a desire to possess both these productions, the general response was not sufficient to justify the Council in going ahead.

The Council hope that members will inspect our new Headquarters when they are passing this way. Hansard House is on the Thames Embankment, a hundred yards east of the Tate Gallery. Members visiting Hansard House will be able to examine a number of interesting papers and documents relating to the Hansard family. These have been presented to the Society by Mr. Arnold G. Hansard, one of the few surviving descendents of Luke Hansard. Among the books are Luke Hansard's Bible which includes the Hansard family tree, a book called *Typographia* by Thomas Curson Hansard, which was published in 1825, and four large folio volumes on the history of the Hansard family. The Council is greatly indebted to Mr. Arnold Hansard for the interest he has taken in the work of the Society.

THE BRITISH GENERAL ELECTION

23RD FEBRUARY, 1950

Limitations of space make it impossible to include in Parliamentary Affairs *articles describing or analyzing all the parliamentary elections which take place from time to time in different parts of the world. Nevertheless we believe our readers, both in the United Kingdom and elsewhere, will expect that some space should be devoted in this issue to the General Election which took place in the United Kingdom on 23rd February,* 1950.

The subject is so vast, and so many aspects of it deserve separate treatment, that we did not feel able to invite one author alone to survey the whole scene. Instead we asked a number of people who were directly concerned with the election to give their own impressions. The contributions which follow were written independently and are selective rather than exhaustive. The authors write from different political points of view; and their experiences of the election varied from observation to active participation. We leave it to our readers to judge what conclusions, if any, emerge from these statements.

The symposium begins with a brief statement of facts and figures. This is followed by the impressions of the election campaign from four candidates. There are then comments on the election written by officials of the three main parties. A political scientist concludes by giving his impressions as an observer rather than a participant.

1. THE FACTS IN BRIEF

Electoral Changes, 1945-50*:* A redistribution of parliamentary constituencies was effected, reducing the number of seats in the House of Commons from 640 to 625. The City of London was merged with Westminister for electoral purposes, thereby losing the privilege of sending two Members to the House of Commons. The principle of one man (or woman), one vote was established by the abolition of the University seats and the business vote. Legislation was enacted restricting the use of

motor vehicles for conveying electors to the poll and reducing the scale of election expenses for parliamentary candidates.

Date of election announced: 11th January, 1950.

Date of dissolution: 3rd February, 1950.

Nomination of candidates: 6th -13th February, 1950.

Number of candidates:	1950	1945
Labour	617	605
Conservative and associates	621	623
Liberal	475	306
Irish Nationalist	2	3
The Speaker	1	1[1]
Communist	100	21
Others	52	124
	1,868	1,683

Date of polling: 23rd February, 1950. (Moss Side[2]: 9th March, 1950.)

Electorate (*i.e.*, number of persons entitled to vote): 34,269,477 (1945: 32,836,419).

Votes and Seats:

	1950			1945		
	votes cast	*% of poll*	*seats*	*votes cast (excluding University seats)*	*% of poll*	*seats at dissolution*
Labour ..	13,266,498	46.1	315	11,992,292	48.0	391
Conservative and associates	12,503,010	43.5	298	9,944,378	39.8	218
Liberal ..	2,621,489	9.1	9	2,245,319	8.9	10
Irish Nationalist	65,211	1.3	2	148,078	3.2	2
The Speaker ..	24,703		1	16,431[1]		1
Communist ..	91,815		0	102,780		2
Others ..	198,666		0	529,671		16
	28,771,392		625	24,978,949		640

[1] Standing as Conservative, with Labour opponent.

[2] One of the candidates at Moss Side died before polling day and polling was consequently postponed.

Average votes per M.P. (to the nearest hundred):

Labour	42,100
Conservative and associates	42,200[1]
Liberal	291,600
Irish Nationalist	32,600

Largest Majority: H. E. Holmes (Labour), Hemsworth . . . 37,680.

Smallest Majority: W. R. D. Perkins (Conservative), Stroud and Thornbury . . . 28.

Forfeited Deposits:

Labour	0
Conservative and associates	5
Liberal	319
Communist	97
Others	39
	460

2. CANDIDATES' IMPRESSIONS

E. M. KING, *Labour Candidate for Poole*

I think it is the Apostles' and Nicene Creeds that divide mankind into the quick and the dead. I found the division convenient in assessing members of the audiences I strove to address during the first twenty-three days of February. On the whole most were quick; quick to see a point, quick to distiguish between slop and genuine regard for human rights; and, above all, quick to see that no Party was putting forward a programme radically different from its opponents. But it was an inherent weakness of the case put forward in all the party programmes that no real solution to our economic problems was expounded.

Among the quicks I remember with pleasure the question addressed by a bespectacled thirteen-year-old youth, not haply to me but to Lord Wilmot: "Sir", he said, "in the seventeenth century unsuccessful politicians were led to the block, and had

[1] Excluding two unopposed returns.

their heads chopped off. Can the candidate give me any good reason why this practice was discontinued?" It is true that the increased tenderness for human life, which was a product of the eighteenth and nineteenth centuries (though not of the twentieth), has brought with it some disadvantages.

And then there were the mentally dead. I cherish the recollection of the pink-faced Blimp in Canford Cliffs who put this to me—I think he meant it nicely—"Is it not a criminal thing for a member of one party to describe another as vermin? How can a candidate so apparently intellectual and gentlemanly as yourself associate with Mr. Aneurin Bevan?" and then with a snort of anger, "It is my opinion that the Labour Party and its adherents are all scum". Said a little differently this might have been quite witty, but the questioner genuinely could not see that he had said anything funny, or illogical, and was bewildered by the reception his question got. That question was symbolic of a tendency I must record, and regret. Compared with 1945 there were an increased number of electors genuinely incapable of seeing any point of view other than their own. Mortified, or financially injured, or not having gained what they had hoped to gain, they were not in a mood to seek the true economic cause, or even to reason about the cause. In 1945 this was not so. Among Socialists and Conservatives alike there were more selfish votes cast in 1950 than in 1945, and that is bad. It is also one of the reasons why candidates independent in character, or middle-of-the-road by conviction, had little success—and that from the point of view of Parliament as an institution is a pity.

But if that was a pity there is something else which is a tragedy—none of the parties have moved with the times. The central problem of 1900 was poverty. It was that problem which attracted the intellect, passion, and sympathy of Shaw, the Webbs, Keir Hardie, Lloyd George, Churchill, and many another progressive of that decade. The Labour Party in particular was born of hunger and want. Now all parties still behave as though poverty were still the central problem. It is not. The poor are not always with us—for the moment at least, there aren't any.

One problem today overshadows all others, peace and union between nations. There is a theme that could stir the hearts and heads of mankind, and to that problem neither the Conservative nor Labour Parties have made any positive contribution whatever. They haven't an idea. Thereby, they bitterly disappoint this little nation with a mighty heart.

Any party which can release the pent up medley of fear, emotion, and idealism latent in every breast on this subject will not only save the world. They will win an Election—hands down.

COMMANDER STEPHEN KING-HALL,
Independent candidate for Bridgwater

I stood as an Independent candidate, and it is from this point of view that my remarks are presented for the consideration of the readers of *Parliamentary Affairs*.

There were three candidates (Conservative, Labour, Independent) and the candidates averaged from four to two meetings a night. My opponents had more meetings than I did because in my case I felt that, since an Independent must stand or fall on his personality and his own views whereas party men must depend on personality plus a programme already generally familiar to the electorate, I should not have meetings of less than one hour's duration.

A rather high proportion of my opponents' meetings were the scene of friendly but fairly vigorous interruption, culminating sometimes in confusion: I had one interruption in the course of forty-one meetings. I usually spoke for three-quarters of an hour, taking up the line of explaining factually our problems, etc. and then inviting questions. I was impressed with the intelligence of questions which were those of persons genuinely seeking information. My references to the need of National Government were always warmly applauded. I was much encouraged by the size of the attendances at most of my meetings and by the sympathetic hearing I was given. I used to leave the meetings believing that I had collected a great deal of support, especially as I knew that many of those present were nominally supporters of one or other of the parties.

On some occasions I was given money by people who told me that they were doing this privately as they were well known to be party people.

When the votes were counted I realized how much I had deceived myself and that although I might have changed many opinions I had not changed many votes. I am now convinced that hundreds of people in the division regarded my meetings as interesting educational occasions (hence the orderliness) but not of much relevance so far as election day was concerned. I had a very strong impression towards the end of the campaign that a large number of the electorate did not understand why I was mixing myself up in what was clearly an inter-party fight all over the country. The following conversation remains in my mind:

Mr. X: "I congratulate you on your election address. It really says something. I've sent it to my brother in the Middle East".

Self: "Thank you".

Mr. X: "I consider that you are the best candidate on personal grounds. I have been following your writings for many years and I agree with your point of view on nearly everything. I thought I should like to tell you this because I'm sorry I cannot vote for you".

Self: "Why?"

Mr. X: "I am a member of the Executive Committee of the Conservative Association at . . . Of course if the University vote existed and I could give it to you, it would be yours. I am a graduate (Oxford) and I very much hope somehow or other you get into the House. You ought to be there. I should like to subscribe to your expenses. I'll write to your Treasurer. At any rate I can wish you good luck, and that I do".

HUGH LINSTEAD, O.B.E.,
Conservative Member of Parliament for Putney

George from the trade union branch came round to my meetings with his list of questions. When it was his night off, someone else took his place, but the questions were the same. My Young Conservatives went round to my opponent's meet-

ings and used the same tactics with, I like to think, more skill. (*Speaker:* Since 1945 the Socialists have reduced infantile mortality by X per cent. *Questioner:* The number of deaths in 1947 was Y thousand more than in 1946. Was that also due to the Socialist Government?). But these activities had no effect on the solid block of Conservatives nor on the similar block of Socialists. What made this election interesting was the attitude of the doubtful voters. They really were doubtful. They came to listen. They resented rowdy interruptions. In consequence, we had big and attentive audiences, crammed halls, and overflow meetings outdoors.

I spoke in three other constituencies and met organized opposition on the grand scale in one only. There my job was simply to tire the interrupters before the candidate came. They reached the stage of standing on chairs and waving their election posters, but I am sure the price paid was the loss of votes. The silent section of the audience reacted against them in the polling-booth. Indeed, too much propaganda, too much loudspeaker work, too many stunts in this election as in others lost more support than they won. The doubtful voter wanted arguments, not noise.

It was sad to realize how party propaganda has driven a wedge into the people. Factory meetings in the lunch hour left no doubt that the factory worker has been taught to divide his political world into exploited and exploiters. Hatred of opponents and disbelief in all they say has become a creed. Yet these factory audiences listened and occasionally, when a silence fell on a canteen of six-hundred or more, one realized that the instinct to give the other side a fair hearing was too strong to be submerged.

There is one clear impression left by this election: that we prefer a two-party political system. My own electorate has provided the Chancellor with four forfeited deposits in two elections. It must be Oxford versus Cambridge, Manchester United versus Chelsea, Reds versus Blues, a strong Government to govern and an Opposition nearly as strong to oppose. "So", says the man in the street, "we keep to the middle of the road, and the more nearly balanced the two parties are in the

House the greater the chance of my being left alone to earn an honest livelihood!"

Locally the two main parties may have a few thousand more votes each which could be polled with even better organization, but if we are broadly representative of the country, the present state of balance might continue indefinitely. The man in the street may be right. He may get what he believes to be a middle-of-the-road policy from an impotent government. But that is essentially the negation of a policy, and this election campaign has shown at least one candidate clearly where the ultimate reorientation of political forces must come. Many questions demonstrated that few Labour supporters feel deeply about nationalization as nationalization. That may worry the Socialist (distinguishing him on this point from Labour), but what the skilled artisan and the ordinary workers seek is some permanent assurance of a fair share of what is available for distribution. He doesn't mind directors, managers and shareholders getting their share, and as between private capitalism and State capitalism he prefers the one that provides most wealth for most people.

WING-COMMANDER EDWARD SHACKLETON, O.B.E.,
Labour Member of Parliament for Preston South

The 1950 General Election was the quietest and best behaved of four election campaigns I have taken part in. When I fought Preston in a by-election in January, 1946, some of my meetings were nearly broken up by organized trouble-making on the part of Young Conservatives—there was even a leading article in the local paper on election hooliganism. In 1950 the Young Conservatives had either disappeared or were more wisely employed than in obtaining sympathy for their opponents by preventing them from speaking. Indeed, the campaign was too quiet. I cannot recall being heckled in the proper sense of the word at all, and at the most I only had one or two interruptions, though some other speakers had a slightly rougher time of it. This might in some ways have been a bad sign (and perhaps it was) in that it showed that our opponents were working quietly, but certainly there was no lack of interest

and I have never had better meetings—in Labour areas, enthusiastic; in Conservative areas, quiet and interested. The Prime Minister's arrival at a packed meeting of from two to three thousand at the Public Hall was an occasion for a demonstration of enthusiasm which stirred even the old timers of the party.

The standard of questions was rather mixed. There was some slight attempt to identify the Labour Party with Communism which was rather futile seeing that a Communist had fought in Preston in 1945 and the same Candidate was fighting the new constituency in Preston North in 1950 also, where his intervention was one of the factors in losing the seat for Labour.

In 1945 the old double-member constituency of Preston was won, with a Liberal and Communist also standing, by a majority of a few thousands. In 1950 Preston North was lost by just under a thousand and I won Preston South by 149; but redistribution as in other Lancashire towns had considerably worsened the prospect for Labour, since new unworked and traditionally Tory areas had been added to the new constituencies. There is little doubt we should have held the old two-member constituency without too much difficulty. Even so, in the new part that was added to Preston South, despite its previous Conservative tradition, there was a strong Labour vote, most of which came out determined to be on the winning side for the first time, but the Conservatives also came out in strength as the 84% poll showed. In the more middle-class parts of the town, where there must have been considerable apathy and abstention in 1945, voting was very heavy.

Despite over-confidence on the Labour side, there was no lack of enthusiasm amongst Labour supporters, especially in the last part of the campaign, or unwillingness to vote, and in certain of the Labour wards there was a fine turn out of canvassers. On the actual day the rain set in from about four or five o'clock and this made the task of the knockers-up much more difficult. We were handicapped, too, by the shortage of cars, and it was only in the last few hours that we had our full complement, and many old and sick people who should have

been polled during the day were left until the last moment or not polled at all. In at least one outlying area, the Labour voters in a small community were not polled at all.

Only one attempt at a stunt by the Conservatives was made when a last minute leakage from one of the local council committees revealed a premature and somewhat tendentious threat to raise council rents, a local government issue which should not have been dragged into a parliamentary election.

I found the main issue in the election and the main fear amongst Labour supporters to be the threat of a return of unemployment, of the kind which Preston knew only too well in the past. The Conservatives for their part campaigned on the issues which generally speaking were universal throughout the country.

In conclusion I would say that while Labour lost little support and indeed in my new area gained a great deal more than had been expected, the decisive factor was the size of the Conservative vote as compared with what must have been a considerable abstention in 1945.

3. PARTY COMMENTS.

MORGAN PHILLIPS, *Secretary of the Labour Party*

To the Labour Party the result was frankly disappointing. But several factors emerge. We were returned as a Government, we achieved a larger aggregate vote than any single party in the history of British democracy.

I am convinced that many more of what are sometimes referred to as the "floating" voters would have cast their votes for the Labour Party had they been sufficiently well informed on more of the main issues. For more than twelve months before the election the hoardings had been covered with anti-Government posters, and leaflets on similar lines had been showering through the letter boxes. In many instances our canvassers found people who had not the slightest idea what was industrial assurance, some who confused it with insuring businessmen against losses, and others who thought it would reduce bonuses on their endowment policies. Misrepresentation of our aims was rife and I feel sure that we suffered as a result.

Redistribution had its effects, too, tending to make many strong Labour seats stronger and many doubtful seats more doubtful than ever from our point of view.

Although we regard the result as disappointing, inasmuch as we did not receive a stronger Labour majority, the results are not depressing. We have met a maximum onslaught and have held it, we have seen in detail the results of redistribution and we are confident that on a future occasion we shall achieve a far larger majority than we have at the present time.

In the meantime the people must be better informed. If I might say so here, I feel that the Hansard Society is performing a useful function.

The work of the Labour Party in office has aroused greater interest in public affairs than has ever previously existed. Witness the vastly increased vote. The people of today are more interested in *their* Government than they have ever been before. That is a good thing for democracy. It is something we appreciate and seek to maintain. In the long run it can do us nothing but good.

Between now and the next election, whenever that may be, we must see that the electors are better informed, and to this end we must expand our individual membership.

The Labour Party will never court popularity by making rash and baseless promises of additional benefits and reduced taxation. Our greatly increased vote in this election proves to us that we are on the right lines.

I am confident that by stating our case boldly and honestly we shall continue to win the confidence of the people, and finally a decisive working majority in the House of Commons.

Miss MARJORIE MAXSE, C.B.E.,
Vice-Chairman of the Conservative Party

The long postponed election opened drably. Preceded by governmental indecision, overcast by vague ministerial warnings about illegal expenditure, the dissolution of Parliament was succeeded by a phony period of three weeks when candidates, meetings and all election activities were muffled with inertia lest they incurred an election expense. Then coats and gloves

came off to grapple with the problems of the newly redistributed constituencies and political activities got into their stride.

One of the distinguishing features of this election was that it was an electors' election and not a politicians' election. Electors of all parties or of none approached it with a quiet determination to decide the issues for themselves and were little influenced by bombast, promises, or threats. As is traditional in British elections they appreciated humour and the quick retort, even though it was at their own expense. Apart from this the electors were in earnest and wanted to know the facts, though naturally enthusiastic supporters on either side cheered their speakers with more enthusiasm than their phrases always merited. The occasional hooliganism was disavowed and repudiated by both major parties. Courtesy from the platform, and policy rather than personalities, was the response to this attitude, and audiences left the speakers in no doubt about their reaction to personal attacks on individuals.

Never was a British election so beset by foreign observers of all kinds and from all countries. These were both impressed and puzzled by what was described at one Socialist meeting as "being on our best behaviour". In the North usually a keener and louder tone prevailed, but audiences listened and then put serious questions.

The dominant questions were housing, the cost of living, and the fear of unemployment, and on these points an exasperated electorate expressed itself bluntly. On the whole they were neither interested nor enthusiastic about nationalization and there was an understandable effort on the part of many Labour speakers to shelve this question.

Another interesting point was the determination of the whole country to rid itself of Communism, and the aversion to vote for splinter parties or independents. The reckless and irresponsible attempt to pile up a mass Liberal vote was foiled by the political sense of the British people. The system of nightly political broadcasts undoubtedly gave the electors an opportunity of listening in their homes to the different points of view and exercised a greater influence than in previous General Elections.

The electorate was thinking, and thinking hard. This is shown by the highest percentage of voting ever recorded at a General Election. Both the Conservative and Socialist Parties polled more votes than at any previous election—the Conservative increase compared with 1945 being 24.6% and that of the Labour Party 10.8%.

The election would have been fought entirely on domestic issues but for Mr. Churchill's speech at Edinburgh where he raised world issues and the necessity for a new approach to maintain peace.

To turn for a moment to the Conservative angle. Directly the Conservative manifesto *This is the Road* was published the initiative passed into our hands, and this, with our superiority in broadcasting, gave us an advantage which bore good results. Conservative candidates, trained and grounded in policy, stuck to the main issues and refused to be drawn into personalities. The middle indeterminate vote appreciated this sense of responsibility and set us on the road to victory.

It was good, but it must be better.

The Rt. Hon. LORD MOYNIHAN, O.B.E.,
Chairman of the Executive, Liberal Party Organization

There is no denying that the Election result was disappointing to Liberals. But it revealed that in spite of the fact that the electoral system is heavily weighted against the Liberal Party and in spite of the "split vote" propaganda of both the other parties, as many as 2,600,000 voters were prepared to stand firm and cast their votes for Liberal candidates. As a result of the fight put up by these candidates we have, since the election, formed vigorous local Associations where there was little activity before.

The number of our members in the House of Commons remains exactly the same, since one of our previous members held a University seat which has now of course automatically disappeared. But the Liberal vote has, as a result of the present "deadlock", assumed a much greater importance. The Liberal Members of Parliament, led by Mr. Clement Davies, judge each issue on its merits and as a consequence now constitute

the only free force left in the House in view of the elimination of the Independents.

But the Liberals once again must draw the attention of the public to the fact that their total vote in the country is not reflected in proportionate membership of the House of Commons. Mr. Churchill recently spoke of "the constitutional injustice" done to 2,600,000 voters and put forward the proposal for an enquiry into the whole question of electoral reform. This was a question, Mr. Churchill argued, which could not be brushed aside or allowed to lie—and we agree.

Not only the injustice done to the Liberal voters but also the deadlock between the Socialists and the Tories has turned other minds in the same direction, and methods of electoral reform are being canvassed on all sides. The Liberal Party prefers the system of Proportional Representation with the single transferable vote which has produced stable government for many years where it has been tried.

The paradox of the election result is that there would appear to be a mandate for Liberalism from the people without a strong Liberal Party to carry it out. There is a majority against Socialism but there is also a majority against a return to the Toryism of the inter-war years. Social reform without Socialism is probably the aim of the majority of the people of the country. Perhaps the deadlock will show how necessary it is to have a strong Liberal Party to work for this objective.

4. IMPRESSIONS BY

H. G. NICHOLAS, M.A.,
Lecturer in Politics, University of Oxford

We are probably still too near the General Election, with its excitements and frustrations, for an entirely just estimate of it to be possible. As someone conducting an academic inquiry into it, I certainly feel myself to be only halfway along the road to the answers I am seeking. There are few dogmatic conclusions which I have reached and many hypotheses which I still have to test under the heavy strain of hard facts. So I will content myself with recording a few personal impressions and exploring some of the fringes of my limited findings.

It was at once an easy and a difficult election to observe. Easy because the participants were kindly, even indulgently, disposed to the academic inquirer. My progress across the map of the election may be charted, in retrospect, by the hospitality and kindnesses of innumerable electioneers, high and low, official and unofficial. Moreover law, custom, and the mutual trust which animates so much of our public life guarantee that the important parts of our elections are the observable parts. The Gulf Stream of our political contests is not peopled by icebergs whose greater bulk lies hidden beneath the surface. Most of what one wants to know is free and open for anyone who will take the trouble to inquire and collect it.

But at another level, this was a deceptive election. Behind the "demureness" which Mr. Churchill noted there dwelt the intensity of interest which manifested itself in the record poll. Was one to blame for not recognizing this phenomenon sooner, for not anticipating that the voters of Coventry, for example, would need more ballot papers than had been printed? At meetings there had been, it is true, good attendance figures and keen, inquiring listeners. But even so Mr. Bevin's audience of six men, seventy-five women, and eight children, with which the Moscow radio made such jubilant play, was a figure which most candidates could parallel at one stage or another of their speaking tours. For days at a time the election gave first place, in the columns of the popular press, to items of other, not always political, news. The B.B.C. certainly whipped up no frenzy of excitement, either in its news broadcasts from which the election was virtually excluded, or even in its "election broadcasts" proper; Dr. Hill apart, these seem not to have created the stir that they did in 1945. The restriction on campaign expenditure kept the visual impact of the election down to a minimum. Posters, I should guess, were less frequent than in 1945, even if window cards held their own as a form of volunteer advertising. Lastly even literature, owing to the rising costs of printing and stationery, was a good deal less pervasive than in former campaigns. Yet, despite all this, when polling day came the voters turned out as never before. What made them face the tedium and the rain of February 23rd?

One answer, of course, is the record number of candidates and of contested seats. In more constituencies more varieties of political opinion were catered for than ever before. But against this must be set two statistical facts—that on the average the vote was no higher in constituencies which had three-corner contests, and no lower in those where the outcome was just as predictable, *mutatis mutandis*, as in Old Sarum. Another answer is the efficiency of the party organizations in "getting out the vote". Yet if this means the carrying out, in the typical constituency, of a canvass even as complete as the average turn-out —*i.e.*, an 84% canvass—and the chivvying of these "pledges" into the booths on polling day, I am very sceptical of such an explanation. Even with the new professionalism of the big parties, even with the volunteer zeal which certainly manifested itself among party workers, I doubt whether there were more than a handful of constituencies in which there was a really reliable canvass of even 75% of the voters. The wholesome human disposition not to bother and not to be bothered is a shield which, however frail, still protects much of the electorate and conceals them from the view of all but the most penetrating of agents. And while real intimidation is extremely rare and doubt of the secret ballot persists only amongst the most or the least sophisticated, there is still in certain areas an inevitable social pressure towards outward political conformity—to Conservatism in Laburnum Villas, or to Socialism at Pithead View. Not all who say "Yes" to a canvasser put their cross in the same space on the voting paper.

For what might be called "the stay-at-home turn-out" one provision of the new Representation of the People Act deserves all credit. I refer to the postal vote; 400,500 valid postal votes were cast in England and Wales. This averages only about 740 a constituency, but I suspect that in many constituencies the postal vote (mainly mobilized by the Conservatives) may have been large enough to tip the balance. It would be interesting to know more on this. For light on another, much-debated provision, the new limits on campaign expenses, we still await fuller information. It is much to be hoped that publication of the returns made by agents will be more rapid after this election

than they were after 1945. Bald though the published details are, they would throw a good deal of light on the way in which the various parties in different types of constituencies exercised their ingenuity within the framework of the law. One sample budget which I have seen was divided up as follows: 45% Printing and Stationery, 14% Paid Employment, 10% Advertising, 5% Room hire for meetings, 4% Committee rooms, 5% Postage, 3% Transport, 7% Miscellaneous, 7% Emergencies. When in this budget the cost merely of printing Election Addresses amounted to £160 it is easy to see what little scope for manœuvre the prescribed maximum permits.

Transport, at least in country districts, seems to have been a serious problem. Not all candidates can have been as fortunate and as chivalrous as the one I heard of in the West Country, who got his people to the polls so early that he was able to lend his cars to his rival for the last couple of hours before closing time. It is also doubtful how enforceable the new law has been; the absence of petitions and prosecutions is hardly conclusive evidence, in itself, of scrupulous observance. Nor has the benefit of the restrictions always accrued to the pedestrian party; many Labour voters, in times past, have ridden to the polls in their rivals' cars.

But if, in this last particular, the ambiguities of the law may have provoked an occasional breach of the strict proprieties, that does not seriously detract from the generally high level of behaviour that has marked the election. This seems to be true whether one applies a legal or a moral yardstick. Not only has the law been kept, but sharp practices of all kinds have been at a discount. There has been little deliberate falsification, "stunting", name-calling, organized whispering campaigns, hooliganism, or stampeding of public opinion. This makes for dull "copy" for the newspapers. But, as February 24th showed, a close race does not lose but gains excitement by being conducted in strict accordance with the rules.

THE NEW INDIAN CONSTITUTION

by RAJENDRA PRASAD
(*President of the Republic of India, formerly President of the Constituent Assembly*)

ON 15 March, 1946, Mr. Attlee, the British Prime Minister, announced that a Cabinet Mission consisting of Lord Pethick-Lawrence, Sir Stafford Cripps and Mr. A. V. Alexander would be "going to India with the intention of using their utmost endeavours to help her to attain . . . freedom as speedily and fully as possible. What form of Government is to replace the present regime is for India to decide; but our desire is to help her to set up forthwith the machinery for making that decision. . . . I hope that the Indian people may elect to remain within the British Commonwealth. I am certain that she will find great advantages in doing so. . . . But if she does so elect, it must be of her own free will. . . . If, on the other hand, she elects for independence, in our view she has a right to do so. It will be for us to help to make the transition as smooth and easy as possible."

In pursuance of this announcement the British Mission arrived in India shortly afterwards and, after prolonged negotiations, announced the convening of a Constituent Assembly consisting of members to be elected by the Legislative Assemblies of the then existing Provinces and of representatives of Indian States on the basis of one member for every one million inhabitants. The seats allotted to a Province were to be divided between Muslims, Sikhs and others in proportion to their population, to be elected by the representatives of these communities by proportional representation by means of a single transferable vote. The distribution of seats allocated to the States and the procedure for the selection of the representatives were to be laid down by negotiations.

The Constituent Assembly met for the first time on 9 December, 1946. The Muslim members who had been

elected on the Muslim League ticket, however, did not attend. Subsequently the British Government announced its intention to hand over power to popular representatives of India on a date not later than June, 1948. Finding that no arrangement acceptable to both the Indian National Congress and the All-India Muslim League was possible, it decided to create two Dominions of India and Pakistan. The Indian Independence Act was passed and the two Dominions came into existence on 15 August, 1947. The members of the Constituent Assembly representing the area falling within the territory of each became, with necessary adjustments, members of two separate Constituent Assemblies, each with plenary power to frame a Constitution for itself and also to pass any laws, including laws amending Acts passed by the British Parliament without reference to it. The Constituent Assembly of India proceeded to the completion of the work which it had started and finally adopted the Constitution on 26 November, 1949.

The Constitution of India comprises 395 articles and eight schedules. In framing the Constitution the Constituent Assembly has naturally taken advantage of the experience of other countries and drawn upon their constitutions. It has also drawn very largely upon the provisions of the Government of India Act, 1935. But in doing so it has taken care to adapt them to the conditions and circumstances in which the Constitution will be worked in India. It is a Federal Constitution and provides for a Union of States. Historically British India had a unitary government, and it was only under the Act of 1935 that a federation was for the first time envisaged. That federation was to comprise two classes of units, one class representing the then existing Provinces which had been parts of the unitary Government of India and had derived certain powers by devolution of authority from the Central Government, and the other comprising the Indian States which were in the position of more or less independent units which were to join the federation on certain terms. As it happened, the federal provisions of the 1935 Act never came into operation.

The Indian States were some 562 in number and covered nearly one-third of the territory and one-fourth of the popula-

tion of India before partition. One of the problems which the Constituent Assembly had to deal with related to these States, but during the period of nearly three years that elapsed between the first session of the Assembly and the final adoption of the Constitution big changes took place, and the States falling within the territorial jurisdiction of India or adjoining it not only acceded to India but have practically come on a par with the Provinces. A very large number of them have been integrated with the adjoining Provinces, others have formed Unions of their own and thus become integrated units. The Constitution describes all its component units, comprising both the Provinces and the Indian States, simply as States.

India is thus a Union of States, and the powers and functions of the Union and the component States are defined and delimited in detail. Schedule 7 gives lists of subjects which are within the legislative jurisdiction of the Union, within the jurisdiction of the States, and subjects over which both have concurrent jurisdiction. The Parliament has power to make laws dealing with all matters not under the jurisdiction of the State Legislatures, and where there is a conflict between Union and State laws in respect of matters within the concurrent jurisdiction of both, the law of the Union will prevail. There are also certain cases which are defined in which the Union may make laws regarding matters in the States, for example, when there is a Declaration of Emergency, or when there is a request or consent by a State Legislature, or when it is declared that it is in the national interest to do so, or for giving effect to international agreements. The executive power of the State is to be so exercised as to ensure compliance with the laws made by Parliament, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary not only for that purpose but also in some other matters, e.g., for the construction, maintenance or protection of means of communication of national or military importance. The powers of the States are thus subject to limitations, and the Union may assume powers in the circumstances defined even over State affairs and administration.

An important feature of the Constitution is the declaration of Fundamental Rights which are enforceable by the Courts, and the formulation of directive principles which, though not enforceable, are nevertheless fundamental in the governance of the country. It is the duty of the State to apply those principles in framing laws. The Fundamental Rights prohibit discrimination on grounds of religion, race, caste, sex, or place of birth. They provide for equality of opportunity to all citizens in matters of public employment, and the protection of rights regarding freedom of speech, assembly, association, free movement and residence in any part of the territory of India, and in respect of property rights and the right to practice any profession or to carry on any occupation or trade. They declare that no person shall be deprived of his life and personal liberty except according to procedure established by law and also provide against arbitrary arrest and detention. They prohibit traffic in human beings and forced labour, and the practice of untouchability in any form is abolished. They secure to all citizens freedom of conscience and the right freely to profess, practise and propagate religion, and the right of any section of the citizens of India having a distinct language, script or culture to conserve the same. They lay down that no person shall be deprived of his property save by authority of law. All these rights are subject to certain limitations which are defined and are considered necessary for the preservation of the state.

The directive principles are intended to secure a social order for the promotion of the welfare of the people. The state shall in particular direct its policy towards securing that its citizens have adequate means of livelihood, that the operation of the economic system does not result in concentration of wealth and the means of production, that the health and strength of workers and the tender age of children are not abused, that there is equal pay for equal work for both men and women, that just and humane conditions of work and maternity relief are provided, that village *panchayats* (councils) with powers to function as units of self-government are organized, that the economic and educational interests of scheduled

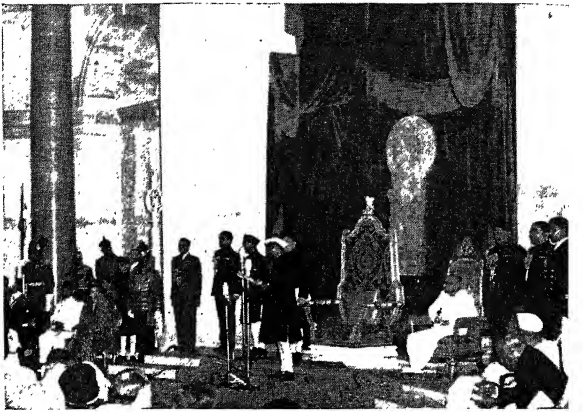
castes (the former untouchables) and scheduled tribes and other weaker sections of the community are promoted with special care, and that agriculture and animal husbandry are organized on modern and scientific lines. The state shall endeavour to promote international peace and security and encourage the settlement of international disputes by arbitration.

The Union Executive will have a President and a Vice-President who will be elected and will hold office for five years. The President will be elected by an electoral college consisting of the elected members of both the Houses of Parliament and the elected members of the Legislative Assemblies of the States. The President may be impeached for violation of the Constitution. In the event of the President's inability to discharge his functions, the Vice-President will act in his place. Like the American Vice-President the Vice-President will also be *ex officio* Chairman of the Council of States and may not hold any other office of profit. He will be elected by the members of both the Houses of Parliament assembled at a joint meeting, and can be removed from office by a vote of no-confidence passed by a majority of all the then members of the Council of States and agreed to by the House of the People.

Parliament will consist of two Houses—the House of the People and the Council of States. The House of the People will consist of not more than 500 members who will be elected directly by the voters in the States on the basis of adult franchise by territorial constituencies so as to give one representative to every 500,000-750,000 of the population. The Council of States will consist of not more than two hundred and fifty members of whom twelve will be nominated to represent science, literature, art, etc., and the rest will be elected by the elected members of the Legislative Assemblies of the States.

There will be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. Any Minister who is not a member of either House of Parliament for a period of six consecutive months shall cease to be a Minister. One of the important decisions which the Constituent Assembly had to take was whether the

Dr. Rajendra Prasad signing the new Indian Constitution
Courtesy: H.E. The High Commissioner for India



Dr. Prasad, having been sworn in as President, addresses the distinguished gathering in the Durbar Hall, New Delhi

Pandit Jawaharlal Nehru being sworn in as Prime Minister by Dr. Prasad

Courtesy: H.E. The High Commissioner for India

President should have powers similar to those of the President of the United States of America or should only be a constitutional head like the British King. The Assembly decided in favour of adopting the parliamentary system of Britain. It follows, therefore, that the Ministry must enjoy the confidence of the House of the People to which it is made collectively responsible, and the President has ordinarily to act in accordance with the advice tendered by his Ministers.

The Constitution lays down in detail the procedure for bills and other legislation which may be passed by Parliament. It follows the British model and makes the House of the People supreme. It lays down that money bills and financial measures shall be dealt with by the House of the People alone. As regards other matters, any difference between the two Houses is resolved by a joint session, and as the number of the members of the House of the People is double that of the members of the Council of States it follows by implication that it is the Lower House which will have the dominant voice.

The House of the People will elect from among its members a Speaker and Deputy Speaker. The Speaker will preside over its meetings and in his absence the Deputy Speaker will act for him. The Parliament will have a separate secretariat for each of its two Houses. The Council of States will elect a Deputy Chairman to act during the absence of the Vice-President. The powers, privileges and immunities of Parliament, its committees and its members will be laid down by Parliament, but until that is done they will be the same as those of the British House of Commons. Special mention may be made of the procedure to deal with money bills which is more or less the same as that followed in the British Parliament. It is thus clear that it is the House of the People which has supreme authority, and the Council of States can only revise or delay legislation but cannot altogether prevent it. The President is given powers to promulgate ordinances during the recess of Parliament which, of course, must be ratified by Parliament within a stated period.

The Constitution lays down that there shall be a Supreme Court of India. The provisions relating to the appointment of

judges, their salaries, their tenure of office and their removal are such as to ensure the independence of the judiciary. A judge of the Supreme Court cannot be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of each House and by a majority of not less than two-thirds of the members of each House present and voting has been presented to the President. The jurisdiction of the Supreme Court is to deal with questions relating to the interpretation of the Constitution. It has large appellate powers as the final court of appeal in the country in civil and criminal matters subject to limitations which are laid down. There will be an Attorney-General of India appointed by the President to give advice on legal matters and perform other duties of a legal character.

Another officer who holds an important position is the Comptroller and Auditor-General of India. He is also appointed by the President and can be removed from office only in the manner and on like grounds as a judge of the Supreme Court. He will be in charge of the accounts of the Union, as also of the States, and is really the watch-dog of the finances of the country.

Among the States there are those which correspond to the Provinces and those which were formerly Indian States. In each of the States corresponding to the former Provinces there will be a Governor who will be appointed by the President and will hold office for a period of five years. In him the executive power of the State will be vested; he will function as a constitutional Governor and be advised by a Council of Ministers, with the Chief Minister at its head. The Ministers will be collectively responsible to the Legislative Assembly. The powers and functions of the Legislature and the Executive are more or less the same as in the Centre except that each State has not necessarily a Second Chamber: provision is made to allow any State which has not a Second Chamber to have one, and to allow a State which has one to abolish it.

The number of members of the Legislative Assembly in any State may not exceed five hundred and may not be less

than sixty. They will be elected on the basis of adult franchise and each member will be returned by a constituency having a population of about 75,000. The Legislative Council will consist of members whose number will not exceed one-fourth of the total number of members in the Legislative Assembly or be less than forty in any case. They will be elected by various electoral colleges such as members of Municipalities, District Boards and other local authorities, persons who have been graduates of three years' standing of any University in India, persons who have been teachers for at least three years, and by members of the Legislative Assemblies of the States. There will also be a few nominated members, as in the case of the Council of States, to represent literature, science, and art, etc. The duration of the Legislative Assembly, as in the case of the House of the People, will be four years unless it is sooner dissolved. The Legislative Council, like the Council of States, will not be dissolved, but one-third of its members will vacate their seats every two years. The Governor has powers to promulgate ordinances during the recess of the Legislature.

Each State will have a High Court whose independence is secured in the same way as that of the Supreme Court and whose jurisdiction will extend to the State and to such other area or territory as may be laid down by Parliament.

The States corresponding to the previous Indian States have more or less the same Constitution as the former Provinces except that in their case the head of the State is not the Governor but the Rajpramukh.

There is a third class of States the administration of which will be carried on by the President through a Chief Commissioner or Lieutenant-Governor. The Parliament may create or continue for any such State a body, nominated or elected or partly nominated and partly elected, to function as a Legislature or a Council of Advisers or Ministers or both, with such powers and functions in each case as may be specified.

There are certain territories which are specified which shall be administered by the President acting through a Chief Commissioner or other authority. The President is authorized

to make regulations for them which shall have the force of law.

There are certain areas which are known as the scheduled and tribal areas which are inhabited principally by tribal people. Special provisions are laid down for the governance of such areas. The scheduled area in Assam is given a great deal of autonomy of administration to be carried on by Councils elected by the tribesmen from amongst themselves.

Provisions are laid down in detail about the distribution of revenues between the Union and the States, regarding the taxes to be levied and collected by the Union but assigned to the States or distributed between the Union and the States, and for grants-in-aid, etc. There will be a Finance Commission appointed by the President to make recommendations about these and similar matters. Privy purses of former Rulers of Indian States agreed to between them and the Government of India are guaranteed. The borrowing powers of the Government of India and the States are defined. Subject to restrictions which may be required in public interest, trade, commerce and intercourse throughout the territory of India shall be free.

There will be an independent Public Service Commission for the Union and for each of the States or groups of States, appointed by the President or the Governor or the Rajpramukh of a State as the case may be, to conduct examinations for the appointments to the services of the Union and the States respectively and to be consulted on all matters relating to methods and principles to be followed in making appointments, promotions, transfers, disciplinary matters, and in dealing with claims regarding pensions, etc. A member of a Public Service Commission may not be removed except by order of the President on the ground of misbehaviour after the Supreme Court has on inquiry reported that he ought to be removed, and he shall be ineligible after retirement for further employment under the Union or State Government. A person serving the Union or State Government holds office during the pleasure of the President or the Governor or the Rajpramukh as the case may be, but cannot be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed.

A special feature of the Constitution of India is that with a view to securing freedom of election it provides for the appointment by the President of an Election Commission consisting of a Chief Election Commissioner and other Election Commissioners for the superintendence, direction and control of the preparation of electoral rolls and for the conduct of all elections, including the appointment of election tribunals for the decision of doubts and disputes in connection with elections to the Legislatures. Separate electorates and reservation of seats for some communities, which were so prominently provided in the Act of 1935, have been abolished, except that for a limited period of ten years provision is made for reservation of seats in the Legislatures for scheduled castes and tribes in proportion to their population and for nomination of representatives of the Anglo-Indian community if they are not returned by election. The claims of the scheduled castes and tribes to services and posts shall be taken into consideration consistently with the maintenance of efficiency. There will be a special officer for the scheduled castes and tribes to investigate and report to the President all matters relating to the safeguards provided for them, and a Commission will be appointed after ten years to report on the administration of the scheduled areas and the welfare of the scheduled tribes. There will be another Commission to investigate the conditions of socially and educationally backward classes and to make recommendations for improving their condition and as to the grants that should be made for the purpose.

Fourteen languages which are spoken in different parts of the country are mentioned in Schedule VIII. A ticklish question which has led to much misunderstanding and bitterness in other countries regarding language has been solved by agreement of the members of the Constituent Assembly which had representatives of people speaking all these different languages. The Constitution provides that the official language of the Union shall be Hindi in Devanagree (or Sanskrit) script. To enable non-Hindi-speaking people to learn Hindi so that they may not suffer in comparison with those whose normal language is Hindi, and generally to provide

for a smooth transition without dislocation and causing deterioration in efficiency of administration, it is provided that English may continue to be used for fifteen years for all Union purposes for which it was used before the commencement of the Constitution. The President may, however, authorize the use of Hindi in addition to the English language. The official language of a State shall be the language or languages in use in the State or Hindi, as laid down by its Legislature. Until Parliament otherwise provides the proceedings in the Supreme Court and in High Courts and the authoritative texts of bills, etc., in Parliament as well as in State Legislatures shall be in the English language, and during the period of fifteen years a bill or amendment regarding languages may not be introduced without the previous sanction of the President. The President may not give such sanction except after he has taken into consideration the recommendations of a Commission consisting of members representing the different languages and the report of a joint committee of members of the two Houses of Parliament which will examine and report on the recommendations. The Union will promote the spread of the Hindi language and its development as a suitable medium of expression for all the elements of the composite culture of India.

The Constitution of India is thus a comprehensive document. Its preamble declares that the people of India have resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens Justice—social, economic and political—liberty of thought, expression, belief, faith and worship—equality of status and opportunity—and to promote among them Fraternity, assuring the dignity of the individual and the unity of the Nation. India accordingly has declared itself a Republic but has at the same time decided to continue as a member of the Commonwealth of Nations with the King as a symbol of their free association. Its success will depend on the good will and public spirit of the people of India and above all on the spirit of accommodation and compromise and the integrity and efficiency of those charged with working it.

THE BRITISH CONSTITUTION IN 1949

by H. R. G. GREAVES
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THE Parliament Act of 1949 is not of comparable importance with the Parliament Act of 1911, for it introduces no new principle into the Constitution. It merely reduces from two years to one the period for which the House of Lords can delay non-financial legislation. Coming into force under the terms of the Parliament Act, 1911, after three successive rejections by the House of Lords, it had already been debated fully in both Houses and discussion of it in 1949 revealed nothing new. It belongs only formally therefore to a review of the British Constitution in 1949, but formally it requires first notice in such a review since it materially affects the relative powers of the two Houses of Parliament. Perhaps, however, future historians of British constitutional development may be more impressed by what it did not do than by the small change it actually instituted. In this it resembles the Parliament Act of 1911. It did not modify the composition of the Second Chamber although for forty years such reform has been recognized by Parliament itself, as well as by all the political parties, to be desirable. It retained the Upper House despite the fact that abolition has long been in the policy of the party which in the 1945-50 Parliament for the first time had the power to carry out its policy. This apparent change of mind in the Labour Party can no doubt be attributed to three facts: that the Lords did not prove as obstructive to the measures of the Attlee Government as they had been to those of the Campbell-Bannerman and Asquith Governments; that more radical changes would have caused what in the circumstances seemed, therefore, unnecessary controversy; and the recognition, new among Labour leaders, that the Lords' share in legislative work saves valuable time to the Commons.

The last year of the first post-war Parliament saw rather less legislation of constitutional importance than its earlier years. There was the Representation of the People Act which consolidated an electoral system that now provides for "one man, one vote", with certain new opportunities for postal and proxy voting, sets a severer limit on the use of motor-cars in elections and on election expenses—though eminent lawyers were later to disagree as to what precisely was covered by election expenses. The House of Commons (Redistribution of Seats) Act not only put into force the recommended re-arrangement of constituencies which abolished two-member seats, equalized their size, and reduced the House to 625, but also established four permanent boundary commissions—for England, Scotland, Wales, and Northern Ireland—under the chairmanship of the Speaker, to effect further redistributions periodically. As a measure of economy the Electoral Registers Act abolished the autumn register. Thus the finishing touches were put to the statutory provisions for the General Election of February 23rd, 1950.

In the field of legal administration, apart from a Law Reform (Miscellaneous Provisions) Act and the Legal Aid and Advice Act, there were two statutes of some importance. The Justices of the Peace Act, giving effect to the recommendations of the departmental Roche Committee of 1944 and the du Parcq Commission of 1948, provided for an age limit of seventy-five for J.P.'s and for the abolition of benches in small boroughs, but left the question of combining office in local government councils and on the bench to be dealt with when local government is reformed. The Juries Act brought special juries to an end and made certain provisions for payment of jurors.

New laws relating to administrative bodies were the Civil Aviation Act and the Air Corporations Act, both comprehensive consolidating measures. The Air Corporation Amalgamation Act merged the British South American Airways Corporation with the British Overseas Airways Corporation, and enabled an additional deputy-chairman of the latter to be appointed without altering its membership of a

minimum of five and a maximum of eleven. The Local Government Boundary Commission Act brought to an end the existence of that body which had been created by the Coalition Government, on the ground that it had itself come to the conclusion that solution of the boundary problem in local government was impossible without a fresh allocation of functions among authorities. The Government had decided, therefore, that this problem must await general local government reform, or, in the Opposition's words, the Government had shelved it.

Rumours of the acceptance of bribes in high places in return for favourable treatment in such matters as the granting of priorities and licences had led to the appointment in October, 1948, of the Lynskey Tribunal. The report of this body in January, 1949, criticized the actions of a junior minister, Mr. Belcher, and of a director of the Bank of England, Mr. Gibson, both of whom subsequently resigned, the former from Parliament as well as from his ministerial post. But the Tribunal completely exonerated all the other M.P.s and civil servants whose names had been irresponsibly bandied about as a result of the activities of a contact agent known, among other designations, as Mr. Stanley. It found that no money payments had passed, but that there had been the acceptance of hospitality and small gifts by Mr. Belcher and a suit of clothes by Mr. Gibson. As a result the Government set up an enquiry into the activities of contact agents in relation to departments. On the whole, it may be remarked that the investigation vindicated to a degree sometimes admired abroad the standards of British administration.

Developments in British relations with countries overseas usually do not come within the scope of a review of the British Constitution unless these belong to the Commonwealth. But mention should perhaps be made of the creation in 1949 of the Council of Europe, not so much because this constitutes yet another inter-governmental organ, but because its assembly has a membership drawn from the Parliaments of its constituent countries, selected—in the case of the United Kingdom by the Government—to represent parliamentary opinion.

Although there has been some loose talk of this as a step towards European confederation, it is of course a consultative body only to which there has been no transfer of sovereignty.

The Commonwealth, however, has seen some legal changes of constitutional significance. The meeting of Commonwealth Prime Ministers made an agreed statement on the important constitutional issues arising from India's wish to become a republic and at the same time to continue her membership of the Commonwealth. Nothing could better illustrate the extreme adaptability of British constitutional forms than the fact that there was by the whole Commonwealth an "acceptance of the King as the symbol of the free association of its independent member nations and as such the Head of the Commonwealth". "Accordingly the United Kingdom, Canada, Australia, New Zealand, India, Pakistan and Ceylon hereby declare that they remain united as free and equal members of the Commonwealth of Nations, freely co-operating in the pursuit of peace, liberty and progress."

The jurisdiction of the Judicial Committee of the Privy Council in regard to India was also brought to an end. It terminated to the accompaniment of valedictory addresses in which the highest compliment was paid to the quality of its historic services in India.

In the field of legislation there was the India (Consequential Provisions) Act to avoid certain difficulties consequent upon India's becoming a republic on January 26th, 1950. The Ireland Act, 1949, provides that the Republic of Ireland, though not a dominion or a member of the Commonwealth, should have some of the advantages which accrue to a member and should not be a foreign country. The British North America Act, 1949, confirms the agreement by which Newfoundland joined the Canadian federation. The British North America (Amendment) Act transfers to the Canadian Parliament, at its request, the legislative authority of the Imperial Parliament, except for (*a*) what is within the exclusive jurisdiction of the provincial legislatures, (*b*) the limit of five years on the life of a peace-time Parliament, (*c*) the use of

French and English in schools. There was also the Colonial Naval Defence Act which enables Colonies jointly to raise naval forces for their defence. Finally, the Coussey Report on the Gold Coast may be mentioned. This report was prepared by an all-African committee set up to examine proposals for constitutional reform. The committee recommended the creation of a Legislative Assembly consisting almost entirely of elected members, and an Executive Council the majority of whose members would be drawn from the Legislative Assembly. Its recommendations were accepted in principle by the Government, which said that since it would be some time before they could be implemented this would give ample opportunity for their later discussion—a remark which may be repeated here. At least as illustrating the gradual way in which Commonwealth constitutional evolution takes place, and yet does so according to a recognizable pattern, this deserves note.

But it is often in the course of doing its non-legislative work that Parliament acts in ways of most constitutional moment. The withdrawal of its confidence from a Government or a Minister is a case in point. And it is in this non-legislative field that one of the most interesting developments of 1949 occurred, one clearly destined to be more frequently repeated. This was the temporary transformation of the House of Commons into what some Members called a shareholders' meeting, when it was called upon to "take note of" the first annual reports of certain public boards. Indeed, the distinctive characteristic of the work of the first post-war Parliament was here bearing its fruit. No doubt can be entertained that this fruit has a new constitutional flavour. A Parliament which was marked out from its predecessors by the creation of many public corporations began to become somewhat uneasily aware of the problems of its own responsibility in connection with their subsequent activities. The Bank of England, the National Coal Board, the British Transport Commission, the Electricity Authority, the Airways Corporations, the Gas Boards, the Overseas Food Corporation, and many other bodies are charged with administering State-owned assets with some kind of accountability to Parliament. Such account-

ability means a corresponding obligation of Parliament to supervise—or is it only to take note of?—their operations.

Obviously several important questions are raised by this development, and the fact that the first debates on annual reports of such bodies have now taken place gives them more concrete expression. What are the respective spheres of competence and responsibility of the Board and its officials, of the Minister and his Department, and of Parliament? How far is the procedure of Parliament adapted to the efficient discharge of its duties of supervising the management of public enterprise? On neither point can it be said that any final, or in some ways any clear, answer has yet been given.

The problem can best be examined by taking first the theoretical delimitation of responsibilities; secondly, by considering how in fact Parliament has behaved; thirdly, by glancing at parliamentary procedure.

The guiding principle of combining tactical autonomy with strategic control was described most fully by the Minister of Fuel and Power when introducing the first debate on the annual report of the National Coal Board. In this he did not differ, except perhaps in emphasis, from the authoritative definition given earlier in the life of this Parliament by the Lord President, Mr. Morrison, but he looked somewhat more fully at its consequences, and some of his explanation is worth quoting.

There is certainly to be discerned in Mr. Gaitskell's remarks evidence of the movement which has taken place away from that extreme view which once saw in the Minister an unwelcome and unauthorized intruder, whom it was the duty of all to prevent from "interfering" with independent and "non-political" public boards in their single-minded search for efficiency in the national interest. In this respect it is scarcely too early to suggest that constitutional history is running true to type; for rarely, except in the judicial field, have Parliament and Ministers been willing for long to abstain from exercising control over their administrative creations. Mr. Gaitskell himself defined the two opposing views and implicitly recognized this trend.

"Opinions differ about just how much power the

Minister and, therefore, Parliament should have over these boards. There are differences of opinion which I think do not particularly follow party lines here. The argument, of course, for limiting the powers is based primarily upon efficiency. Many take the view that if the Minister interferes too much with the Board the Board will not be able to conduct its business so efficiently. It is emphasized that these boards are trading concerns, that their activities are for that reason particularly unsuitable for ministerial and Parliamentary control. . . .

"On the other hand, there are those who . . . attach less importance to the freedom of the boards from interference on grounds of efficiency, and more importance to the rights of Parliament to exercise control over State enterprises. No doubt, a good case can be made out for both points of view, but it certainly is not possible to hold them both at the same time. One cannot object to powers being given to the Minister and at the same time require him to accept responsibility.

"The nationalization Acts which have been passed during the present Parliament do not, in fact, follow either of the extreme points of view which I have just mentioned. They limit the Minister's powers pretty severely, though not so severely as they were limited in the case of the pre-war corporations and not so severely as some would like them to be. The conception embodied in these Acts is that the industry concerned should be managed by public boards in the public interest, in accordance with certain principles and directives laid down by Parliament in the relevant Acts. It is for the nationalized boards to comply with these statutory duties and obligations."

But it must at once be added that everything in the debates here considered suggests the closest identification of the Minister with the board. "I must make it clear that I have complete confidence in the Board's judgment on these matters", says the Minister. And this sentiment is repeated by one minister after another in relation to his own particular board throughout these debates. It would hardly be likely that he

would speak otherwise, since he is in every case responsible for appointing the members of the board and can usually remove them.

> "The general powers of the Minister," says Mr. Gaitskell, "are really embodied, first of all, in his powers of general direction, and secondly, of course, in the fact that he appoints the Board. If the Board in the exercise of their statutory functions were to proceed on lines which the Minister thought were contrary to the national interest, he could give them directions of a general character. Thus the Minister must accept responsibility for the general lines on which the Board are carrying out their functions. He must accept responsibility for what I should describe as the general success or failure of the enterprise. But he is not responsible for the day-to-day management and administration of the industry by the Board or the operations of the Board in the production and selling of coal or the management of ancillary activities."

There are certainly variations in the emphasis laid by different Ministers on the measure of their responsibility. Despite the last words quoted of Mr. Gaitskell, he appeared to take responsibility for everything done by his board including, to instance a specific point, the selling-price of coal to Denmark. Here the Minister pointed out that "under the Act the Minister has no specific powers of price control whatever". But the Board was freed in regard to exports by "a deliberate decision of the Government", he went on to explain, from a pre-nationalization agreement not to increase prices without permission. And now, he thought, "we should be making a great mistake if we were to intervene." Thus the specific power was not there but—by implication—it, or something very much like it, could be used were it not that the Minister approved the price policy of the Board.

On the other hand, Mr. Barnes stressed more particularly his divorce as Minister from the operations of the British Transport Commission. While Mr. Strachey, during the debate on the Overseas Food Corporation, seemed also to take full responsibility for everything done by that body, and so to

lay the same emphasis as Mr. Gaitskell, Mr. Creech Jones, when closing that debate, was at pains to insist: "I would say most emphatically that, regarding the operation of the scheme, there has been no political interference of any kind and no pressure either by my right hon. friend the Minister of Food or anyone else in the Government on the Corporation in regard to its target and time-table." There emerges pretty clearly from these debates the conclusion that whatever may be the statutory provisions for confining the Minister's responsibility and powers of "interference", however much or little he may have refused or been absolved from the necessity to answer for the Board's actions, he does in face behave as the champion of his Board and the defender of its every move. Indeed, he then appears in relation to it in a role practically indistinguishable from that of, say, the Postmaster-General in relation to his department. If he is in practice to appear thus as the Board's champion, it is difficult to see how the principle of his limited responsibility can fail to become a myth disguising administrative reality. In such confusion there is danger. Some anxiety has been expressed on this point. Mr. Peter Thorneycroft, for the Conservative Party, spoke of "frustrated Members of Parliament who never get their Questions past the Chair." In the debate on the British Transport Commission's report he went on, "I find it rather a sad thing that the Ministry which I once had the honour to serve is for 364 days of the year a barrier to any sort of information at all, and then, on the 365th day, in a few rather quick speeches—some rather long, but very few speeches altogether—we try to lift this curtain to see what is going on. I think we will have to consider some other way of tackling this subject."

It would seem that the issue of principle involved is whether, as Mr. Gaitskell implied, the responsibility of the Minister and of Parliament are co-extensive. For it must always be remembered that as the general watch-dog and representative of the nation Parliament is concerned with the whole conduct of any nationalized enterprise. But so, it may be argued, is the Minister. At least in present circumstances of recent nationalization and of economic readjustment the efficiency and

achievement of such key undertakings is of the first concern to the Government and reflects directly on its policy. The pre-war aim to emancipate the Minister from accountability for details (or tactics) is bound in these conditions to seem unreal, for it is from such specific examples that the evidence of relative achievement and efficiency is supplied. A Government closely identified with a policy of nationalization is unlikely to admit that Parliament can have any wider concern with the working of a public enterprise than itself. A Government with a contrasting policy might identify itself less readily with a board's every action. It might conceivably be more willing to see the House devising machinery for scrutiny of a board's activities going beyond the area of the Minister's responsibility.

Before considering parliamentary procedure in this respect it would be well to glance at the manner in which Parliament has in fact behaved in its dealings with these matters, for that may make clearer what parliamentary organization must be designed to do.

Much has been said in debate about the machinery of the boards. Of this, if it can be asserted with, for instance, Mr. Gaitskell, that "there is too much vague generalization, quite unsupported by evidence", it must be added that the opportunity to obtain that evidence—by direct contact with the administration of the boards, by other enquiry, or by something else than vague generalization on the ministerial side—is not readily available to M.P.s. There was also patent in Mr. Gaitskell's fulsome defence of the Coal Board's machinery a tendency to accept an out-of-date rule-of-thumb administrative method in preference to any recognition that there is such a thing as a science of public administration, a science which is nevertheless now increasingly acknowledged and utilized in other branches of the public service, in such a direction as that of the Organization and Methods Divisions of the Treasury and other departments of State. "I am sure", he said, "that most of us understand that whether organization works well or not depends far more on personalities and personal relationships than anything else."

Still in the realm of machinery, there has been criticism

of the size of boards, coupled with suggestion of duplication with ministries—for instance, by Mr. Wilfrid Roberts on the Overseas Food Corporation; lack of autonomy or over-centralization—especially in coal and transport; of the "line and staff system" and the failure to make the worker feel himself a significant part of the organization—by Mr. Edelman on the Coal Board. Other examples could be given, but enough has been said to underline the interest shewn by the House in matters of administrative machinery, and perhaps also to suggest that that interest is needed.

Parliamentary behaviour in relation to the staffs of public boards has already caused some heartsearchings. There are likely to be more. For personal eulogy and attack have been one of the least satisfactory aspects of this constitutional development. The Minister naturally pays tribute to the character, the skill, the integrity, etc. of the persons he or his predecessor has appointed to the board. The Opposition perhaps equally naturally is apt to assail these persons. There is no rule of procedure to prevent such attacks at least on the competence and policy of such persons, although they cannot themselves reply. If a member of a board is dismissed, the roles of Minister and Opposition are reversed, and the latter appear as the sponsors of an aggrieved official. This may lead to the kind of remark made in one debate: "It is not usually considered quite right for people who lose their appointments to go squealing to the Opposition to get their case put forward in this House." What are the rights in this matter? When disagreement develops on a board, are the minority members of the board justified in going to Opposition M.P.s to get the notice or publicity for their views denied them by the Chairman or majority? Is such action proper when taken after the dismissal or resignation of members from the board? Is it perhaps even acceptable while they are still on the board? In neither case is the practice compatible with the idea of "no political interference" in the affairs of "a strictly commercial enterprise", and its insulation from the kind of parliamentary sniping which is deemed to be the chief justification for preferring a public corporation to a department of State for

running such public business. Nor is it consistent with Civil Service standards of professional conduct. The result might prove to be that the nation has the worst of both worlds—neither the absence of political interference designed for party ends, nor effective responsibility to the public organized through the Minister's departmental responsibility and the right of Parliament to ask Questions.

Reference has already been made to the sense of frustration alleged by some M.P.s at restrictions imposed upon their right to question Ministers. Mr. Barnes made it clear that he at least vastly preferred the present system, under which that was so, to what preceded it, where, he said, "the type of question directed to the Minister concerned itself more and more with details of management with which the Minister was not competent to deal." He regarded the annual report as a superior substitute, giving "Members all the information upon which they can form a proper judgment as to whether the Minister and the British Transport Commission have discharged the responsibility Parliament has placed upon them." Much better, he obviously thought, was the prevailing position where the one-time Permanent Secretary of the Ministry of Transport now transformed into the Chairman of the Commission could, and did actually, apply the ability he once shewed in framing the Minister's replies to Questions in the practice he had adopted of personally answering all letters from M.P.s "He has all the necessary experience to deal with hon. Members. . . . I think that is a very good thing, and I have heard and have received very few complaints from hon. Members with regard to that procedure." But Mr. Barnes's remarks raise as many issues as they settle. If the head of a board has to answer M.P.s personally where is all the alleged saving of office work and officials' time? If this be the implied virtue of the new system, must there always be a Chairman with that same departmental experience, and if not what becomes of the virtue?

On the actual procedure adopted by the House much has been said, and no doubt much more will be said. Is there to be "a claim for enquiry whenever anything goes wrong" as

made by the Opposition and resisted by the Government in relation to the groundnuts scheme? What of the suggestion that in debating such annual reports the House of Commons should regard itself as a shareholders' meeting? Both in the Government's decision as to the form of its resolution, "the House takes note of the annual report", and in the commendatory quotation of this term by the Minister of Fuel and Power there is evidence of a hope that party division would not be stressed in the debates. But perhaps at this early stage it is inevitable that the issue for and against nationalization should defeat the realization of this hope, no less from Government than from Opposition speeches.

Two further procedural points emerge from the debates. The first is the claim that the parliamentary time given to the debate is wholly inadequate—of course a not unusual criticism in regard to any debate. Six hours each were given to the British Transport Commission, the National Coal Board and the Overseas Food Corporation, of which time nearly half was taken by the Government and Opposition front bench spokesman. The second point can best be summed up in Mr. Peter Thorneycroft's words, opening his summary of the Opposition case in the transport debate: "This is a vast subject, ranging from hotels to air charter companies, from the bulk carriage of goods on the railways to the details of local haulage. What is wanted is not a sort of Second Reading Debate as we have had to-day, but a searching analysis of what, if anything, is really going on behind the iron curtain of the Ministry of Transport." Such an aim could, of course, only be met by the use of parliamentary committees, for the time available in the House of Commons time-table does not even permit of an annual six-hours debate on each and every one of the public boards now existing, and it may be felt that 1949 brought the prospect of that constitutional development appreciably nearer. But it certainly witnessed Parliament emerging in a new but as yet ill-defined character—as a shareholders' meeting.

PARLIAMENT AT SEA

by W. L. BURN
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THE Crimean War was not considered to have enhanced the reputation of the Royal Navy. George Borrow grumbled about "Scotch admirals"; *Punch* posed the conundrum, "What is the difference between the Fleet in the Baltic and the Fleet in the Black Sea?", and answered, "The Fleet in the Baltic was expected to do everything and it did nothing: the Fleet in the Black Sea was expected to do nothing and it did it." In March, 1856, the House of Commons had been treated to a violently acrimonious debate between Sir Charles Napier, who had commanded in the Baltic, and Sir James Graham who at that time had been First Lord of the Admiralty. However, the Treaty of Paris was concluded on the 30th March and it was deemed proper to celebrate that event by a naval review at Spithead on St. George's Day, 23rd April, 1856. The review, as a spectacle, was a success. Ships were dressed at 8 a.m. At noon the Queen, in the royal yacht, steamed through the double line of warships. Between 2 and 3 o'clock the four squadrons of steam gunboats ("a novel feature", as the *Annual Register* put it) did the same. At 3 p.m. there was a tactical exercise and at 4 p.m. the gunboats bombarded Southsea Castle as satisfactorily as a limit of six rounds per ship would allow. At night the fleet was illuminated by blue lights. It was estimated that the spectacle had been witnessed by 100,000 spectators, and the notice of it in the sixth volume of Laird Clowes' *The Royal Navy* ends with this passage:

> "The Peers were in the *Transit*, screw, Commander Charles Richardson Johnson; the Commons in the *Perseverance*, 2, screw, Commander John Wallace Douglas McDonald."

Seldom have twenty-three words more effectively concealed what happened.

On the 18th April the Commons began to show an interest, though a somewhat critical one, in the forthcoming celebrations. Why, asked Colonel French, were the peers to be allowed to take their wives with them, a privilege denied to the members of the lower House? Mr. W. S. Lindsay, who had gone to sea as a coal-trimmer at fifteen and had been successively a ship's captain, a coal-fitter at West Hartlepool, a shipbroker and a shipowner, wondered why the review should be held at all. Why had this immense flotilla not been prepared long since, when it might have been of service in the war? And was it not a fact that the *Perseverance* was the same ship that had capsized? The First Lord of the Admiralty, Sir Charles Wood (afterwards the first Lord Halifax), had an answer to everything. This was not surprising for, beginning with the incontestable advantage of marriage to a daughter of Earl Grey, he had held one office or another in the various Whig administrations since 1830 and was to remain in political life nearly twenty years longer: a clever, confident, experienced politician of the second or third rank. The peers, he said, of whom there were not many, could be accompanied by the peeresses, but there was no room for the wives or families of the 658 members of the House of Commons. It was true that the *Perseverance* had once "met with an accident" but since that time she had shown her seaworthiness by making six voyages across the Bay of Biscay. The purpose of the review was to show what means we should have had of carrying on the war if that had been necessary. The members of the two Houses would leave Waterloo by train at 7 a.m. on the 23rd; tenders would be in waiting at Southampton to take them to their respective ships; refreshments would be provided by the Admiralty; the return train would leave Southampton at 6 p.m.

These arrangements, modified slightly at a later stage, had been made with care by the Admiralty. The managing director of the South-Western Railway had promised that "Train No. 3" should leave Waterloo at 7 a.m., arrive in Southampton about 9.15 a.m. and return for London about

6.30 p.m. The Mayor of Southampton was requested to keep clear the passage between the railway station and the dock. Captain McDougal had five tenders for carrying his distinguished passengers to their ships. It was expected that they would be on board by 10.30 a.m., would wait for the royal yacht and would then follow it through the line of warships; an honour to which Sir Charles attached special importance. Breakfast and a cold lunch, with "sherry, beer and soda-water", were to be provided.

Thus beguiled, some 400 peers, an unknown number of peeresses and 450 members of the Commons duly arrived at Waterloo on the 23rd April and took their places in a train (actually No. 10 and not No. 3) which started punctually at 7 a.m. This must have seemed particularly gratifying to at least one M.P. who had seen 1,000 passengers queueing for tickets on the previous day. From this moment, however, the luck turned. Train No. 3, an excursion train carrying 670 passengers, had left Waterloo at 5.30. At Esher a feed-pipe burst and although the train managed to crawl to Woking it could get no further. Woking, unfortunately, was not connected by telegraph with Esher and it was therefore a considerable time before an engine could be sent from Kingston to shunt the luckless excursion train into a siding and allow its successors to pass. A further complication was apparently added by an ordinary train which was perseveringly making its way up to London from Southampton. It was not until about 11.30 a.m. that Train No. 10 reached Southampton.

There Captain McDougal had been waiting with his five tenders, quite unaware of the breakdown on the line, for the best of reasons—that no one had thought fit to telegraph the information to him. In the meantime another train had arrived, filled with passengers for the *Himalaya*, who demanded that they be taken out to their ship. Captain McDougal for some time refused but eventually, faced by a crowd of "angry gentlemen and ladies" and unaware that Train No. 10 was now only three-quarters of an hour away, he yielded and placed four of his tenders at their service. Consequently, when the belated legislators (somewhat hungry, one suspects, by this

time) had made their way from the station to the docks there was only one vessel, the *Harbinger*, waiting for them. The task of embarking about 1,000 passengers, carrying them out to the *Transit* and the *Perseverance* and embarking them in those vessels took another hour. It was nearer 1 o'clock than 12 before the parliamentarians finally got under way for Spithead and it will be recalled that the *pièce de resistance* of the review, the passage of the royal yacht between lines of warships, had begun at noon.

The members of the Commons, in the *Perseverance*, beyond missing most of what they had been invited to see and finding the lunch provided for them disappointing, had henceforth not much to complain of. At least they caught their return train about 6.30 p.m. and arrived back in London at a reasonable hour. It was far otherwise with their Lordships in the *Transit*.

That unfortunate vessel had needed help from the first and although the spectacle of two judges helping to man the capstan must have been stimulating it did not augur too well for the future. The *Perseverance* forged ahead and the *Transit* made up to the fleet barely in time to witness the tactical exercise at 3 p.m. Then her engines stopped and she lay, as Lord Ravensworth said next day, like a log upon the water. The gun-boats bombarded the castle; the review ended; presently the blue lights illuminated the fleet; but still the *Transit* lay on the water or moved back slowly, with frequent stoppages, to Southampton. Lord Granville, leader of the House of Lords and therefore the representative of the Ministry on board, had been told by his exasperated fellow-peers to go below and stoke the fires himself. It was 10 p.m. before the *Transit*, having collided with a gun-boat on the way, saw her passengers safely landed. Then ensued an uneasy spectacle, with peers, bishops, bishop's wives, scrambling helter-skelter for the station. But Train No. 10 had gone hours ago. It was not until 11 p.m. that an ordinary train could be made up and started, and not until 3.30 a.m. on the 24th that it arrived at Waterloo, leaving their Lordships with the task of finding cabs in the small hours of an April morning.

That afternoon the storm broke, for it is to be remembered that the country as a whole, with the memories of the Crimean Winter fresh in its mind, was extremely sensitive to official mismanagement. It was very little use for Lord Granville to tell the Lords what a large, fine ship the *Transit* was. They knew much more about it than he did, for, summing up the situation about 3.30 p.m., he had hailed a small boat and got himself and a few friends put ashore on the Isle of Wight. Lord Campbell, the Chief Justice, arriving home at 4 a.m., had put in a full day in Court before going down to tell the Lords that there had been "such gross mismanagement somewhere as to give one a clear idea of what happened at Balaklava". In the Commons the first word fell to Mr. Stafford, a Conservative M.P. who had held minor office at the Admiralty under Lord Derby in 1852 and had been convicted by a Select Committee of grave misconduct. After that he had gone out to Constantinople where he did excellent work for the sick and wounded—"a very wise and benevolent way of re-establishing his reputation", as Granville put it—and had formed strong views about war as conducted by Whigs. He begged to congratulate the Government on their arrangements for the previous day: he had now seen their system at work at home and abroad; they had done as much as possible to make Southampton resemble Balaklava. Ought there not to be a special illumination dedicated to the safe return of those Members of Parliament who had entrusted their persons to the awkward keeping of Her Majesty's Government? Lord William Powlett followed, with the more effect because, being in Southampton early on the 23rd, he had been honoured by an invitation to join the *Transit*. The Marquis of Granby was another of those who mentioned Balaklava. When there had been such confusion at Southampton, only 78 miles from London, how could anyone be astonished at what happened in a harbour 3,000 miles away? Unfortunately, the arch-villain was absent. The duties of the First Lord, Lord Palmerston explained, still detained him at Portsmouth ("Laughter").

On the next day, however, Sir Charles was in his place to stand fire. Was he aware, Mr. Lindsay asked, that the *Transit*

was the same vessel which had broken down three times before? Sir Charles then embarked upon his defence. He pointed out that the initial blame lay with the railway company which had brought its passengers to Southampton two hours late; he excused the action of Captain McDougal in parting with four of his five tenders; he described in detail the careful arrangements which the Admiralty had made for the comfort of its guests. As for the *Transit*, there was nothing at all wrong with her machinery or anything else. Her commander was "covered with medals" and she had stopped for the simplest, though perhaps the least excusable of reasons —her fires had been allowed to go out. That was no fault of the Government which could hardly be expected to remind the engineers, "Don't let your fires go out".

Sir Charles certainly succeeded in diverting some of the wrath from his shoulders to those of the South-Western Railway, for when Mr. Chaplin, as a director, had to undertake a defence, county gentlemen such as Sir William Jolliffe and the ultra-Protestant Mr. Newdegate turned on the railway company and denounced what Sir William called its "inefficient monopoly". Mr. Henley, M.P. for Oxfordshire and one of the shrewdest men in the House, pointed out, however, that as ordinary trains on ordinary days took 2 hours 20 minutes to go from London to Southampton it was ridiculous to expect crowded trains, on a crowded day, to make the journey in five minutes less. He could not understand how Sir Charles Wood had allowed himself to be gulled, "even by railway directors", with such a belief. Finally, Sidney Herbert somewhat acidly remarked that the Government ought never to have undertaken to make the arrangements for members who were not, after all, obliged to go and, if they wanted to go, ought to have been left to make their own arrangements. The House, he concluded, had very different functions to discharge.

That was all; but it is almost safe to speculate that one class of ladies heard of the misfortunes of the peers and still more, of the peeresses, with equanimity; that is, the wives of members of the Commons who had been refused tickets.

PARLIAMENTARY CONTROL OF THE PUBLIC ACCOUNTS—II

by BASIL CHUBB
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WHEN the Exchequer and Audit Department has completed its audit and examination of the public accounts and the Comptroller and Auditor General has certified them and written his reports, accounts and reports are presented to the House of Commons, which refers them to its Select Committee of Public Accounts. This Committee is the last stage of the audit control.

The exact functions and aims of the Public Accounts Committee are nowhere defined by the House. Standing Order No. 90 says that there shall be a committee "for the examination of the accounts showing the appropriation of the sums granted by parliament to meet the public expenditure and of such other accounts laid before parliament as the committee may think fit". But nearly ninety years' experience and development have given members a fairly clear idea of what are the possibilities and limitations of such a Committee. The sum of this experience was epitomized by a former Chairman of the Committee, the Rt. Hon. Osbert Peake, when he defined its functions as, first, to ensure that money is spent as Parliament intended; second, to ensure the exercise of due economy; and, third, to maintain high standards of public morality in all financial matters.[1]

To ensure that money is spent as Parliament intended is clearly the primary function of the Committee. It is the job which it was originally set up to do by Gladstone. It includes, first, a final check on the veracity of the accounts and continuous attention to their form and to the principles of accounting; second, a check on appropriation, for the

[1] *Public Administration*, vol. XXVI, No. 2 (Summer, 1948), p. 80.

Committee exists to assure the House that public money goes in the correct amounts to the destinations that Parliament intended. In the pursuit of this aim the Committee compares estimates and accounts and hears the reasons for discrepancies. Finally, it includes a check on regularity. The Committee aims to ensure that money is spent according to the rules and practices laid down by Parliament, the Committee itself, the Treasury, and the departments. These are by no means formal duties, for the best known and basic rules of public finance are infringed from time to time even today.[1]

The exercise of due economy, though nowhere officially stated or defined, has come to be a well established aim, and the Committee has tended gradually to increase its scope in this field. It involves examination of cases of waste and investigation of departmental machinery, methods and action. It includes, also, the examination of contracts and the consideration of the relations between government and the business concerns with which it deals. It is work of the greatest importance and yet it must be a subsidiary function. The Committee is directed to examine the accounts and is geared to an accounting and audit system designed primarily to ensure regularity and only incidentally to test efficiency. In any case, time difficulties preclude such enquiries on a large scale.

The third aim laid down by the Rt. Hon. Osbert Peake is less easily explained. The Committee acts as a referee between the House and the departments and between government and industry and it censures doubtful financial practices. In the future its members may develop rather into Tribunes of the Plebs, watchdogs for the public and the business community against the methods of the ubiquitous state.

The Committee is appointed annually at the beginning of the parliamentary session, generally in November or December. Its fifteen members are nominated by their parties and are chosen, in the normal fashion, in proportion to voting strength in the House. Their Chairman, on whom, as we shall see,

[1] See, e.g. the third Report of the Public Accounts Committee for 1946/47, H.C. 139 (1946/47), paras. 25-29 and 105.

falls most of the work, is, by convention, a senior Opposition member, often an ex-junior minister and destined perhaps for high office, and he is sometimes an experienced Accounts Committee member. He may or may not be an ex-Financial Secretary to the Treasury, for practice has varied here. Many Chairmen in the past have been connected with banking or business and not a few have had distinguished records as financial experts or as advocates of economy.

It is not easy to judge the calibre and qualifications of the other members. Previous knowledge is difficult to establish and the past records of members and their professions do not necessarily indicate an aptitude for this work. In general the Committee has been composed of senior members of the House. But though this was a most marked feature until recently, the impression to be gained from examination of more recent Committees is that seniority does not count for so much today and that the Committee is less distinguished than it was.

But it is in the Committee itself and there only that members can learn their jobs. They are usually re-elected if available, and the records of some are truly remarkable. Sir Assheton Pownall sat for twenty-three years and it cannot be denied that when he was Chairman, in his last three years, he knew all that experience, at least, could teach him. Since 1900, about 57 per cent. of the members have served for more than two years and therefore had a chance to become useful. Also, since the number of new entries each year is low, the Committee always has a large core of experienced members. But as against this it is clear that, whereas those who served in the nineteenth century showed a keen interest in the work and a vast knowledge of formal points of accounting, today most members have but little time available to study the much greater range of problems with which the Committee deals.

A true picture of the Committee is not possible, however, unless its procedure and techniques are examined. Through the years the volume of work has increased enormously with the rise in expenditure, and members must now meet about twenty-five to thirty afternoons in a session. A preliminary meeting is held in November or December to decide the year's

programme, but work does not start until the end of February when the first of the Auditor General's reports become available. From then until Easter, it meets once a week, thereafter, when more material is available, twice a week until July. This pattern is rather rigid and, without altering the procedure seriously, it is difficult to avoid the conclusion that the limit has been reached. This is a matter of some importance in view of increasing pressure of work.

An examination of attendance records shows that the Committee in session does not consist of anything like fifteen members at all. In the first place, since 1922, the only official member, the Financial Secretary to the Treasury, who is appointed *ex officio*, has only attended odd meetings. Again, normally, only seven or eight attend each meeting and even to attend does not mean that members are there all or even most of the time. To be recorded as present it is only necessary to appear in the Committee room for a moment or two. In practice members come and go freely, and breaks of a few minutes for want of a quorum (five) are not uncommon. Finally, the records show that, as in most committees, it is customary for the Chairman and some one or two colleagues (often the most useful) to attend very regularly, while many attend half or less of the meetings.

The picture must be still further modified in view of the actual procedure in the Committee. It proceeds by way of interrogation of witnesses in the normal fashion. It has powers to call any person whom it considers can aid its deliberations but, in fact, it depends almost wholly upon the Auditor General, the Treasury representatives and the Accounting Officers (usually the permanent heads) of departments, with whatever experts the last named care to bring with them.

The Comptroller and Auditor General and the Treasury officers have gradually been accorded a special status and, though attending technically as witnesses, they are in practice much more than that. The Auditor General is naturally the key man. He is, in truth, the "acting hand" of the Committee. His reports are the basis of its investigations and, although they are necessarily brief, a whole year's work of his entire

department is available to the Committee. He attends every meeting at which evidence is taken and, nowadays, many of the deliberative meetings too.[1] He aids members by turning up papers and furnishing information quickly. Behind the scenes his influence is very great indeed. On the mornings of Committee meetings he confers with the Chairman for an hour or two and they run through the business of the afternoon.[2] The Auditor-General advises the Chairman[3] and suggests lines of enquiry and possible questions. It is also said that he indicates the answers the Chairman might reasonably expect to receive. Thus an amateur Chairman can ask not only the questions which the experienced committee-man might put but he can also act as an expert interrogator.

The permanent Treasury witnesses, the two Treasury Officers of Accounts, also have a special though less important part to play. They have a particular responsibility for the form and technical details of the accounts and they also act as Treasury representatives and give that department's views and comments.

Before this tribunal, consisting of the Chairman and some half dozen members, together with the Clerk of the Committee, the Auditor-General and his secretary and the two Treasury officers, come the permanent heads of departments one by one, in their capacity of Accounting Officers. They explain their departments' mistakes and they justify their decisions. Overworked as they all are, they cannot keep a direct hold on all financial affairs and if required to attend the Committee they must and do learn a brief. And not only do they come briefed, but they are often accompanied by subordinate heads of branches, for the Committee's questions sometimes range widely. In addition, subordinate officers sit behind their chiefs in the Committee room, ready to help them out and, according to Mr. Glenvil Hall, they "arrive with masses of files in case anything has to be turned up at a moment's notice."[4] The

[1] See H.C. 189-1 (1945/46), Evidence, Q. 4582.
[2] *Ibid.*, Evidence, Q. 3929.
[3] *Ibid.*, Evidence, Q. 4299.
[4] *Ibid.*, Evidence, Q. 3369.

evidence of the Accounting Officers and their colleagues is often supplemented by written memoranda, furnished on request. Only rarely do ministers and unofficial witnesses attend.

It has been pointed out that the Chairman comes well prepared and it is, therefore, not surprising that the interrogation of witnesses is carried out mainly by him alone. This is pre-eminently a gathering of experts and the majority of members play a small part in the proceedings. At most, one or two of them add anything useful and now that the Committee works against time, the Chairman tries to hurry them along to the next business. Hence, most members appear rather in the role of jurors, who will come later to some conclusions on the matters at issue.

Finally, it is important to notice that party and politics rarely creep in. The atmosphere in the Committee is judicial rather than political.

In this fashion the accounts are examined competently and at speed. By July the Committee has, thanks to the Auditor General's sieve, passed in review all the accounts presented to Parliament and it remains only to report.

The form and arrangement of reports have changed but little since the early days. A first report is issued in March if and when an excess vote is requested by a department. Occasionally reports on specific subjects are issued in the course of the session in order to attract the attention of the House. The main report of the year, however, appears in July. It is compendious, that is to say it deals with a whole variety of subjects, both those common to all departments and those affecting single departments only. Points at issue are outlined briefly and judgments and recommendations are short, firm and measured.

Reports are technically made to the House of Commons, as they must be, but, in fact, it is to the Treasury that much of their contents is directed. From the earliest days the Treasury adopted the practice of writing Minutes on them, and although a Committee decision has no force in itself "it is for the Treasury to take the matter up with the department con-

cerned".[1] The Treasury acts too under some compulsion for, by long standing convention, the recommendations in reports are usually implemented unless there are very strong reasons to the contrary. The full weight of a senior committee is behind them and, from the beginning, the Treasury recognized that this attention and respect is both constitutionally desirable and the necessary price to be paid for the invaluable support the Committee gives to it in its dealings with other departments.

The combined weight of Committee and Treasury is enough to ensure that departments take notice of and implement recommendations. It is well known that they entertain a lively apprehension of the Committee. Every investigation has made this clear and the Rt. Hon. Herbert Morrison has said that it is "a real factor in putting the fear of Parliament into Whitehall".[2] This ability to get its recommendations carried out is one of the Committee's greatest achievements. It has joined its own authority and the knowledge of the Auditor General with the willing co-operation of the Treasury to complete an effective process of control.

The House itself only rarely discusses Accounts Committee reports. There is no need to and it is all to the good that this important work can be carried out without taking up valuable time on the floor of the House. Far from the Committee suffering by reason of this neglect, it is perhaps partly because it is able to bypass the lengthy and politics-ridden processes of the full House that action on reports is achieved so smoothly.

* * *

This description of the procedure and techniques of the Public Accounts Committee makes clear the nature of the control it effects. It is, first, *expert* control. Full use is made of a professional audit, evidence is taken from experts only, and most of the questioning is done by the Chairman. To these all-important facts may be attributed the excellence of its reports. That is not, however, to say that the Committee should be made smaller and more expert. The weight added

[1] Lord Kennet, *The System of National Finance*, 3rd Edition, p. 111.

[2] H.C. 189-I (1945/46), Evidence, Q. 3227.

by less active, but senior and representative Members of Parliament is of great value.

It is, second, a *financial* control. The Committee is exactly what its name indicates. Its main work lies in the realm of accounts, accounting and financial procedure and its machinery is devised primarily for that purpose. It has, however, developed a powerful control of contracts and is a valuable promoter of economy and efficiency, although its limits in these fields are clear.

It is, third, a *judicial* control and it is divorced from party politics. "The law is clear, the past actions of the department are clear" and members "have to decide whether the law and the past actions of the department have coincided".[1] To do this, they have adopted a judicial procedure with expert evidence on the facts and the law and their reports have a judicial tone.

It is, fourth, a control the main effect of which is *deterrent*. It is thus impossible to assess the Committee's value in any quantitative terms, but witnesses from all sides have consistently testified to its worth in this respect.

It is, finally, a control, which, *though ex post facto, is not a mere post-mortem*. The Auditor General conducts a running audit and most points are cleared up at once. Decisions on disputed points are implemented, affect future expenditure and procedure, and thus lead to continual improvement.

It is to these qualities that the Public Accounts Committee owes its success. An Accounts Committee ought to be an expert and a financial body. The ability to achieve a reputation for being judicial and non-party means that it can operate with an assurance and a continuity otherwise impossible. Its inevitability and its achievement in securing Treasury co-operation to implement reports, together with the quality of its work, are probably the most significant causes of its success.

(*Concluded*)

[1] Mr. George Benson to the Select Committee on Procedure, H.C. 189-1 (1945/46), Evidence, Q. 3958.

THE STATUTORY ORDERS (SPECIAL PROCEDURE) ACT, 1945

by HUGH MOLSON
(Member of Parliament for The High Peak, Derbyshire)

ON the 9th November, 1949, the Parliamentary Secretary to the Ministry of Health moved in the House of Commons "that an Humble Address be presented to His Majesty praying that the provisions of the Statutory Orders (Special Procedure) Act, 1945, be applied to Orders hereafter to be made under any of the enactments specified in the following table" which included 11 Acts of Parliament ranging from 1868 to 1939. It is worth considering the Special Procedure established in 1945 and the experience which we have had of it since then.

Until the first half of the nineteenth century, any Local Authority or private individual could obtain special powers only by promoting a Private Bill. In 1845 the Inclosure Commissioners were given power to make orders for the enclosure of certain common lands upon certain conditions; as they were not permanently valid without being appended to and confirmed by an Act of Parliament, they were called Provisional Orders. This example was followed in the case of the Gas and Water Facilities Act, 1870, the Public Health Act, 1875, and the Electric Lighting Act, 1882. The procedure was that the Orders were scheduled to a Provisional Orders Confirmation Bill which was then dealt with by Parliament as local legislation. As the need for special powers for authorities of various kinds has increased during the twentieth century, two new procedures have been evolved. Some Orders can be made which are not subject to review by Parliament and there are also Special Orders. It was because neither of these was considered entirely satisfactory that the Special Procedure was devised which was intended to combine the best features

of the Provisional Order and the Special Order "and, so far as practicable, to avoid the disadvantage of either of the systems." (*Hansard*, v. 414, *c.* 1374/87.)

When explaining the Statutory Orders (Special Procedure) Bill in the House of Commons on the 18th October, 1945, Mr. Herbert Morrison described the Provisional Order procedure as "slow, cumbersome and expensive" and he proceeded to describe the procedure and the delays which it might involve. He then went on to say that many Orders, although not suitable for consideration on the floor of the House, required to be carefully considered and could not be fully and satisfactorily examined without the apparatus of maps, diagrams and so forth—which could only be employed in a committee upstairs when Counsel are heard for and against the Order if it is opposed.

The Special Procedure was originally worked out while the Coalition Government was in office with special reference to that Government's White Paper on Employment Policy which contemplated the rapid undertaking of large-scale works if there were danger of a recurrence of mass unemployment. It was first foreshadowed in the White Paper on "A National Water Policy" which was the precursor of the Water Act, 1945. It was applied in the Town and Country Planning Act, 1944, and in the Local Government (Boundary Commission) Act, 1945, which was in effect repealed on the same day that the Special Procedure was extended to other Acts on the Statute Book. In his introductory speech, Mr. Morrison explained that the new procedure would be extended to cover a wider sphere after experience had been gained. "The present Government agree with the late Government that the new procedure is experimental and that we shall have to watch how it goes. We think also that it might be wise to defer its further application until some experience of its working has been gained."

When the Bill was first published in 1945, a group of Conservative back benchers who sought to preserve parliamentary control over delegated legislation put down a reasoned amendment declining "to give a Second Reading

to a Bill which fails to expedite or improve the present long-established Provisional Order Procedure, but deprives the subject of his present absolute right to have his petition heard by an impartial committee of this House and moreover diminishes the control of Parliament over delegated legislation." When the same Bill in a slightly amended form was re-introduced by the new Government into the House of Commons elected in 1945, I was one of the few survivors of the earlier cave of opposition and I tried to do what I could to state the case against the measure.

The general idea of the Bill was to distinguish two kinds of petition against an Order, those which only sought to effect a minor amendment called "Petitions for Amendment" and those which in effect opposed the policy of the Order called "Petitions of General Objection". In the Explanatory Memorandum prefixed to the Bill, the distinction was explained in these words: "The new feature proposed is that a distinction should be drawn between objections based on broad grounds of policy and those based on individual interests so that the former may be decided on the floor of the House and the latter referred to a joint committee."

This distinction was further explained by the Lord President of the Council in the following words: "The Bill provides that in the case of petitions of general objection—that is, petitions which raise the whole policy of the Order—the House can either decide the issue on the floor, one way or the other, or it can refer it to a joint committee." We did not object to this difference in the treatment of the two kinds of objection, provided that the distinction could be clearly and accurately drawn. In the text of the Bill, however, the distinction was differently worded as follows:

(*a*) "A petition praying for particular amendments . . . shall be known as a petition for amendment;

(*b*) A Prayer against the Order generally . . . shall be known as a petition of general objection."

We did not think that this wording clearly differentiated between objections to detail and objections to policy. Accordingly in the Committee Stage we sought to substitute the

wording in the Explanatory Memorandum, which of course there had no legal validity and is not even reprinted when the Bill becomes an Act, for the words used in the text of the Bill. As usual, however, the parliamentary draftsmen preferred their own wording and the Government accordingly resisted the amendment, but gave an undertaking to bear the point in mind when new Standing Orders were being drafted.

The new procedure imposes upon a committee of two, the Lord Chairman of Committees of the House of Lords and the Chairman of Ways and Means of the House of Commons, the heavy responsibility of deciding whether any particular petition is one of general objection or of amendment. I maintained throughout the proceedings on the Bill that in many cases it would be impossible for the two Chairmen in fact to decide whether any particular petition did go against the policy of the Order or was one of detailed amendment only. Some confirmation of my view is provided by what happened in the case of the Mid-Northamptonshire Water Board Order. In this case the Chairmen certified the petitions against the Order as petitions for amendment, but when the Joint Committee gave effect to some of these petitions by amending the Order, the Minister of Health considered the changes so destructive of his policy that he incorporated the amended Order in a Bill and had it amended so as to secure its enactment in its original form in accordance with Section 6 (3) of the Act.

In the reasoned amendment to the Special Procedure Bill, we said that the new procedure "deprives the subject of his present absolute right to have his petition heard by a Parliamentary Committee of this House". Under Provisional Order Procedure, any such Order if opposed had to be referred to a small Select Committee, usually consisting of four Members, which sat upstairs and heard Counsel argue for the Order on behalf of the promoters and against it on behalf of the petitioners. Under the Special Procedure, if the Chairmen decide that a petition is one of General Objection, the issue goes in the first place for decision to the House of Commons. Let us see what this involves in some imaginary case. Let us suppose

that some water authority has made an Order which, however reasonable from its own point of view and of the majority of its consumers, is deemed by some small local authority to be harmful to the interests of its inhabitants. In such a case that small authority will lodge a petition of General Objection. It will then have to persuade its Member of Parliament to move on the floor of the House that the Order be annulled. Generally speaking, the Minister of Health supports the Order. The private Member of Parliament is, therefore, put into the almost hopeless position of having to persuade a number of his friends to stay in the House after most of the day's work is over in order to support him in moving the annulment of an Order which will probably be supported by the Minister of Health and therefore by the Government majority who will have been purposely retained in the House by the Government Whips. It was for that reason that I used with perhaps wearisome repetition throughout the different stages of the Bill the phrase that a Government could use this procedure as a bulldozer for sweeping away opposition. Manifestly, this was a serious reduction in the rights of the subject—whether a Local Authority or an individual—because under the previous Provisional Order Procedure, the small Local Authority could have their case argued by their Counsel as a matter of right with plans and diagrams upstairs in the forensic atmosphere of a Select Committee.

The Government in the end gave assurances that these powers would not be used so as to prevent petitions of General Objection being referred to a Joint Committee if there were a reasonable *prima facie* case in favour of doing so. On the 12th November, 1945, Mr. Arthur Greenwood, then Lord Privy Seal, who was in charge of the Bill, wrote to me as follows:

> "Lastly, you ask for a general undertaking on the part of the Government at Third Reading that we shall not use our majority as a bulldozer, to prevent petitioners from obtaining a fair hearing by the Joint Committee. It must in the nature of things be for the Government of the day to decide upon each case as it arises, whether it is of

sufficient importance to use the power which with our British system, attaches to possessing a majority in the House of Commons. It has, however, never been considered by the present Government (and I have reason to believe it was not considered by the Coalition) that this Bill was in any sense a bulldozer."

Accordingly, to obtain a public statement to this effect on the Third Reading, I said "I would ask the Lord Privy Seal to give an undertaking now that this Government, at any rate —and if they set an example, perhaps other Governments will follow it—will not use their majority as a 'bulldozer', in order to prevent petitioners from having a fair opportunity of having their case heard in a judicial atmosphere upstairs, even if it is going to delay matters to a certain extent." (*Hansard*, v. 415, c. 2177.)

The Lord Privy Seal replied:

"I cannot speak for any future Government, least of all for a Government drawn from the opposite benches, but I can speak for His Majesty's present Government. I do not want to mince my words at all, and I give the most specific assurance that we do not regard this Bill as a weapon with which to beat down opposition or to carry proposals through without due regard to all the interests who ought to be considered. I think it would be wrong to use the Bill in that way, and so long as this Government continues I can assure hon. Members that this specific pledge which I have given will be honoured to the full." (*Hansard*, v. 415, c. 2180/1.)

From the above quotations it will be plain that Mr. Aneurin Bevan was not guilty of any breach of this undertaking when in the case of the Mid-Northamptonshire Water Board Order he considered himself obliged in order to give effect to his policy to enact the Order in its unamended form by means of a Public Bill. We who had opposed the Bill had never questioned the constitutional propriety of a Minister in such a case using the Government's majority for this purpose. In the

same speech in which he had given the previous undertaking, the Lord Privy Seal added:

> "The present Government are just as anxious as were the previous Government, which first introduced this Bill, that all interests which ought to have a hearing shall be heard but—and I do not think that hon. Members opposite can dissent from this—it must rest with the Government of the day, whatever its complexion, to advise Parliament whether a particular issue raised on a Ministerial Order is or is not one of policy on which the Government may feel bound to use their parliamentary resources in support of their point of view. I should imagine that would be accepted by the Front Bench opposite. I gather that it was certainly in the mind of the previous Government when the Bill was under consideration by them." (*Hansard*, v. 415, c. 1281/2.)

There were two features of the Bill which I sought to have amended in the Committee Stage. The Bill provided that where the Minister deemed it necessary, after an Order had been amended by the Joint Committee, to incorporate it in a Bill and re-introduce it in its amended form, the Bill should be deemed to have passed the Committee Stage unamended and that, therefore, the Order would only have to run the gauntlet of a Third Reading. I pointed out that this was exactly what the Order had not done; it had not passed the Committee Stage unamended, but on the contrary it had been so much amended that the Minister was no longer prepared to approve it. It ought, therefore, to go to the House of Commons in the usual parliamentary manner for the Report Stage —where the House could, if it so wished, reverse the decisions of the committee. The Lord Privy Seal did not accept this amendment on the Committee Stage, but after consultation accepted on the Report Stage an amendment which I had agreed with the parliamentary draftsmen. This provided that the Order shall be appended to a Bill and submitted to the House in the amended form in which it left the Joint Committee. As it goes to the House for the Report Stage, it is then

open to the Government of the day to invite the House to reverse the amendments made on the Committee Stage by the Joint Committee. This was in fact the procedure followed in the case of the Mid-Northamptonshire Water Board Order Confirmation Bill, for on the 4th May, 1949, the Government moved a series of amendments on Report Stage in order to restore the Order to the form in which it had originally been introduced before it had been substantially amended by the Joint Committee upstairs.

The Lord Privy Seal was, however, less accommodating on another matter and what I regard as an anomaly there has been preserved. In the case of a Petition of General Objection, it is not possible for a substantive motion to be moved on the floor of the House that the matter be referred to a Joint Committee. It is necessary first that two Members, whom I may in this connection quite properly describe as "stooges", should move and second that the Order be annulled; only then will it be competent for two other Members to move as an amendment to the Annulment Motion that the petition of General Objection be referred to a Joint Committee. This follows inevitably from the wording of Section 4, Sub-Section 1 and the proviso thereto, which reads as follows:

> "Provided that on the consideration of any motion for the annulment of an Order under this Sub-Section, either House may, if . . . the House is of opinion that the question of annulment ought not to be determined until that objection has been further examined, order that the petition be referred to a Joint Committee of both Houses."

It is surely a clumsy and circuitous procedure that special consideration by a Joint Committee as to the merits of a petition cannot be moved unless previously an annulment of the Order has been proposed.

The question now arises, what has been the experience so far gained of the Special Procedure? It must be freely admitted that several Orders have been easily and expeditiously passed where there has been no opposition, and it may be that they have taken effect more rapidly than Provisional Orders

would have done under the old procedure. We have in fact only had one case where a Special Procedure Order has been opposed and that is the case already referred to of the Mid-Northamptonshire Water Board Order. As has already been stated, the Chairmen decided in that case that all the petitions against the Order were Petitions for Amendment. In taking this view they rejected the arguments put forward on behalf of the Ministry of Health. This solitary example of a Special Procedure Order being opposed does, therefore, as I have already claimed, tend to confirm my view that the Chairmen could not possibly tell without a detailed enquiry, which they were not empowered to conduct, whether any particular petitions did or did not question the policy of the Order.

One of the principal advantages claimed for the Special Procedure when the Act was under discussion in 1945 was that it would be speedy. In the case of the Mid-Northamptonshire Water Board Order, which provides us with our only experience, this claim cannot be sustained as the following timetable will show:

Order first advertised	December, 1947
Local Enquiry at Northampton ..	April, 1948
Draft Order as proposed to be made by Minister published	October, 1948
Joint Committee of both Houses of Parliament	February, 1949
Confirmation Bill introduced into House of Commons ..	April, 1949
Royal Assent	31st May, 1949

Provisional Orders generally take not more than six to nine months in contrast with the eighteen months of this Special Procedure Order. It is only fair to say that the local enquiry at Northampton in April, 1948, was abortive, but it was part of the purpose of the Special Procedure that a local enquiry should contribute to the speed of the procedure.

The next point is not one of substance, but of procedure. When the meaning of the 1945 Act came before the Joint Committee on the first and only occasion, almost all the experts agreed that upon a true construction of the Act a

somewhat strange procedure had to be followed. Whereas under Provisional Order Procedure, the promoters of the Order had first to explain the purpose of the Order and deploy their arguments in support of it, it was found that the Statutory Orders (Special Procedure) Act, 1945, had provided for the contrary. The petitioners had to explain why they desired an amendment to the Special Order before the promoters of the Special Procedure Order had explained why they supported it. Thus the Mid-Northamptonshire Water Board was not required to explain all the technical reasons relating to volume of water, rate of flow, levels, etc., before the petitioners had to state their case. Historically it is interesting to note that until some little time before 1834 this procedure was followed in the case of private Bills, but it may be supposed that experience resulted in a complete reversal of procedure being made and the adoption of the more logical procedure under which the promoters state their case first.

To show the significance of the change made by the passing of this Act, it is necessary to emphasize a very important distinction between the new Special Procedure and the old Provisional Order Procedure. When a petition is filed against a Provisional Order, the Department which makes the Order does not, as a rule, appear in support of the Order, but leaves the conduct of proceedings in Committee to the applicants for whose benefit the Order was made. In the case of Special Procedure Orders, however, Standing Order 243, although it authorizes the Minister to transfer his right to be heard in support of the Order to the parties on whose behalf the Order was made, clearly contemplates that normally the Minister will himself support the Order.

This new activity of the Government in supporting an Order arises fundamentally from the underlying purpose of the Special Order Procedure. When Mr. Churchill first announced it on the 20th June, 1944, he said:

> "It would not, however, be open to petitioners . . . to petition against the main purpose of the Order." (*Hansard*, v. 401, c. 34/5.)

Fortunately this drastic proposal was somewhat modified

in the course of the consultations which preceded the introduction of the Bill. It remains the case, however, that unless a Petition of General Objection has not only been lodged but has been referred to a Joint Committee, that Joint Committee is not empowered to question the policy underlying the Order.

It is in fact an extension of the rule which applies when a Private Bill is opposed. If a petitioner prays to be heard only against certain clauses of a Private Bill, he cannot be heard against the general case made out in favour of the Private Bill. If he wished to do that, he would have to dispute the preamble. The trouble in the case of the Special Order Procedure is that it reduces to two cases what ought to have been three cases. It is logically possible for petitioners:

(*a*) to dispute the policy of an Order,
(*b*) to admit the policy but say that it is not applicable to those circumstances, or
(*c*) to admit both (*a*) and (*b*) but to ask for certain minor amendments.

Objections falling under (*b*) above have to be put into the category of (*a*) or (*c*) by the Chairmen.

There has not been a single case of a Petition of General Objection against a Special Order. There is, therefore, no experience by which we can judge whether the procedure will operate satisfactorily in such a case. It, therefore, seemed to me reasonable and proper to argue against the Humble Address that we had not had the experience that would justify an extension of this procedure to the 11 Acts of Parliament contained in the Schedule.

Delegated legislation is an important realm of parliamentary action where it is necessary to combine full protection of the rights of minorities, whether individuals or local authorities, with the reasonable demands of the majority and large public authorities. It is not clear that this sudden extension of the Special Procedure is a step in this direction. There is not sufficient evidence to prove the case of the Government or to prove the case of those of us who have opposed this policy both under this Government and the last one. It is, therefore regrettable that this extension has so prematurely been made.

CONSTITUTIONS OF THE BRITISH COLONIES–IV

MISCELLANEOUS

Information prepared by SYDNEY D. BAILEY, with a prefatory note by the Rt. Hon. JAMES GRIFFITHS, M.P.
(*Secretary of State for the Colonies*)

I am glad to have this opportunity of paying tribute to this useful series of articles. They have brought together for the first time a great deal of information which previously was not readily accessible either to the general public or to those who are concerned with the Colonies in their work or studies.

A valuable contribution has been made to knowledge about the Colonial territories; and, at this stage of Commonwealth history, it is very important that there should be among the people of this country the widest knowledge of Colonial institutions and ways of life, so that a true feeling of family relationship may be engendered and the great work of Colonial advancement be supported by full understanding of the heritage which we share with the Colonial peoples and our interdependence with them in future prosperity.

Perhaps I may be permitted to leave a few thoughts by way of general comment in the minds of those who have read these articles. They will have observed the diversity of the Colonial scene and the unevenness of constitutional progress: and, at the same time, the unity and consistency of the underlying principles which are steadily guiding the Colonial peoples towards responsible status in the Commonwealth. I would ask readers to remember that the scene, though crystallized in these articles at a moment of history, is in real life never static. There is never a moment at which the movement of political and constitutional growth checks or pauses. Great changes are even now under way in West Africa, for example: throughout the Colonial territories new ideas and fresh advances are being canvassed: and all peoples, as they embark upon new responsibilities, are in effect laying the foundations for further progress in the future.

Finally, I would like to set the constitutional scene in perspective against our Colonial policy as a whole. While the steady progress towards responsible forms of Government continues, every effort is being made to develop the material resources of the territories so that their political structure may be firmly based on a sound economy, able to support the social standards and services needed if political institutions are to be worked by knowledgeable and responsible people. By increasing educational facilities at every level, by encouraging voluntary social movements and using all the methods of community education, and not least by adapting, expanding and modernizing the local government institutions in the territories, we are seeking to foster and train that sense of social responsibility and service on which effective democracy depends. JAMES GRIFFITHS.

THIS last paper outlining the Constitutions of British Colonies is concerned with three groups of territories:

(i) **Mediterranean**—Cyprus, Gibraltar, and Malta.

(ii) **Indian Ocean**—Aden, Mauritius, and the Seychelles Islands.

(iii) **Atlantic Ocean**—St. Helena, Ascension Island, and Tristan da Cunha.

Each of these territories is of strategic importance. Gibraltar, Malta, Cyprus, and Aden lie along the Suez Canal route to India and the Far East. Seychelles and Mauritius lie off the East coast of the African continent, Ascension Island, St. Helena, and Tristan da Cunha off the West coast.

In the development of satisfactory political institutions in some of these territories, particularly acute difficulties have had to be faced. Malta enjoyed responsible government from 1921 until 1930, but in the latter year the Constitution was suspended until 1932 and again in 1933. In 1947 responsible self-government was restored. Even now the island faces economic problems of an unusually perplexing kind. In Cyprus a vociferous political element has demanded union with Greece, and insistence on this demand has made all attempts at further constitutional progress nugatory. The Colony of Aden has a normal Colonial administration under a

Governor, but the Protectorate of Aden, with an area greater than the United Kingdom, is inhabited by 650,000 people with little experience of stable political institutions. In Mauritius there have been difficulties due to the fact that two-thirds of the population is Indian by race in an island in which the culture is predominantly French.

In their different ways these are illustrative of the sort of difficulties which face Colonial powers that seek to secure the political advancement and eventual self-government of the peoples of dependent territories. There are two extremes between which a middle course must be found. One extreme is for the Colonial power to maintain a paternalistic control so long that discontent cannot find an outlet through constitutional channels but is driven underground. The other is to transfer power to indigenous hands before sufficient experience of constitutional government has been obtained, thus leading to an unstable political life.

It is necessary to repeat the words of caution which prefaced the earlier papers in this series. First, the need to present the information in summarized form inevitably makes it incomplete. Secondly, constitutional changes in the Colonies are constantly taking place. I have outlined the constitutional position as it was in April, 1950.

ADEN. *Colony and Protectorate.* Aden peninsula occupied in 1839, remainder of Aden colony secured by purchase between 1868 and 1888. Chiefs accepted British protection at various times between 1839 and 1914.

Population: Aden Colony.	Arab	58,455	
	Indian	9,456	
	Jewish	7,273	
	Somali	4,322	
	European	365	
	Others	645	
		80,516	(1946)
Protectorate		650,000	(rough estimate)

Governor: Possesses reserve powers.

Executive Council of the Colony: The Governor presides and the Council consists of the Chief Secretary, the Attorney-General, the Financial Secretary, and such other persons as may from time to time be appointed.

Legislative Council of the Colony: The Governor presides and the Council consists of four *ex officio* members (the Senior Officer Commanding British Forces, the Chief Secretary, the Attorney-General, and the Financial Secretary), not more than four other official members, and not more than eight appointed unofficial members.

Protectorate: The tribes nominate their own chiefs who must subsequently be recognized by the Governor. The Chiefs are advised by political officers under a British Agent for the Western Aden Protectorate and a British Agent for the Eastern Aden Protectorate: the latter is also Resident Adviser to the Sultans of the Hadhramaut States (Mukalla and Seiyun).

ASCENSION ISLAND. *Dependency of St. Helena.* Occupied in 1815. Made a Dependency of St. Helena in 1922.

Population: 191 (1948), of whom 135 were St. Helenians in the employment of Cable & Wireless Ltd.

Note: The Government of St. Helena is represented by the local manager of Cable & Wireless Ltd., who is appointed a Justice of the Peace and Resident Magistrate.

CYPRUS. *Colony.* Occupied in 1878 and formally annexed in 1914.

Population:	Greek-Cypriots	361,373
	Turkish-Cypriots	80,361
	Others	20,584
		462,318 (1946)

Governor: Has the power to legislate.

Executive Council: The Governor presides and the Council consists of the Colonial Secretary, the Attorney-General, the Treasurer, and two unofficial members appointed by the Governor.

GIBRALTAR. *Colony.* Captured from Spain, 1704, and formally ceded by Treaty of Utrecht, 1713.

Population: 22,532 (1947 estimate), mainly Europeans.

Governor and General Officer Commanding the Garrison: Has a general reserve of legislative power enabling him to pass into law any measure necessary in the interests of defence, public order, public faith, or good government.

Executive Council: The Governor presides and the Council consists of four official members (the Combatant Military Officer next in seniority after the Governor, the Colonial Secretary, the Attorney-General, and the Financial Secretary), and three unofficial members appointed by the Governor.

Legislative Council: The Governor presides and the Council consists of three *ex officio* members, two nominated members (of whom both may, and one must, be an official), and five elected members.

Franchise: British subjects over 21 years, other than members of the Armed Forces, who have resided in Gibraltar for at least one year.

MALTA. *Colony.* Occupied during French Revolution and recognized as part of British Empire in 1814.

Population: 288,903 (1946), mainly European.

Governor: Possesses reserve powers.

Executive Council (Ministry)*:* When practicable the Governor presides; the Council consists of the Prime Minister and not more than seven other Ministers, all of whom are members of the Legislative Assembly.

Nominated Council: Defence, external affairs, and related matters are reserved to the Governor who is advised by the Nominated Council. This consists of two *ex officio* members (the Lieutenant-Governor and the Legal Secretary) and three officers, one from each of the Services.

Privy Council: Consists of the Executive Council and the nominated Council sitting together under the Chairmanship of the Governor.

Legislative Assembly: Consists of forty members elected by proportional representation. The Council passes Bills for the

peace, order and good government of the island, subject to the limitations regarding reserved matters.

Franchise: Universal suffrage.

MAURITIUS. *Colony.* Captured from French in 1810. British possession confirmed 1814.

Population: Indian 278,803
Chinese 12,380
Others 147,520

(1948)

Governor: Possesses reserve powers.

Executive Council: The Governor presides and the Council consists of three *ex officio* members (the Colonial Secretary, the Procureur and Advocate-General, and the Financial Secretary), and four unofficial members of the Legislative Council selected by their fellows for appointment by the Governor, and such other persons as His Majesty or the Governor may appoint.

Legislative Council: The Governor presides and the Council consists of the *ex officio* members of the Executive Council, twelve members nominated by the Governor, and nineteen elected members.

Franchise: British subjects of either sex aged 21 years or over, with certain literacy, armed forces, or business premises qualifications.

ST. HELENA. *Colony.* Annexed by East India Company in 1659. Became Crown Colony in 1834.

Population: 4,748 (1946), mainly of mixed descent.

Governor: Possesses the power to make Ordinances.

Executive Council: The Governor presides and the Council consists of the Officer Commanding Troops (when an officer holding this appointment is serving in the Colony), the Government Secretary, the Colonial Treasurer, and such other persons holding office under the Crown as the Governor may nominate.

Advisory Council: The Governor presides and the Council

consists of not less than six unofficial members, appointed by the Governor, one of whom is appointed as the representative of, and after consultation with, firms engaged in the flax milling industry in the Colony, and two of whom are appointed as representatives of, and after consultation with, the Friendly Societies.

SEYCHELLES. *Colony.* Captured from French in 1794. British possession confirmed 1814.

Population: 34,632 (1947). The European population comprises about 3 per cent. of the total. The rest are African or coloured. There are also a few Indian traders.

Governor: Possesses reserve powers.

Executive Council: The Governor presides and the Council consists of the Secretary to the Government, the Attorney-General, the Treasurer, and such other persons (one of whom must be unofficial) as His Majesty or the Governor on instructions may appoint.

Legislative Council: The Governor presides and the Council consists of six official members (the Secretary to the Government, the Legal Adviser, the Treasurer, the Senior Medical Officer, the Director of Education, and the Director of Agriculture), two unofficial members nominated by the Governor, and four elected members.

Franchise: Literate British subjects of 21 and over who have resided in the Colony for at least one year and pay either income or property tax.

TRISTAN DA CUNHA. *Dependency of St. Helena.* Annexed in 1816. Made a Dependency of St. Helena in 1938.

Population: 230 (1945), nearly all born in the island.

Administrator: The Government of the island is carried on by an Administrator, appointed by the Governor of St. Helena.

(*Earlier papers in this series have dealt with Colonies in the Western Hemisphere* [*Vol. II, No.* 2], *the African Colonies* [*Vol. II, No.* 4,] *and Colonies in the Far East and Pacific area* [*Vol. III, No.* 2].)

CORRESPONDENCE

Sir,

May I apologize for a slip of the pen, which I discovered only after the publication of my second article on the struggle for parliamentary institutions in Germany.

The footnote on p.321 (Vol. III, No. 2) should refer to "the Duke of Cambridge" and not "the Duke of Connaught". It was George, second Duke of Cambridge (1819-1904), a cousin of Queen Victoria, who became General Commanding-in-Chief in 1856, and as such opposed the reform plans of Gladstone's Minister of War, Cardwell, in 1870. On his somewhat involuntary retirement in 1895, the Queen expressed the wish that her son, the Duke of Connaught (1850-1942), should succeed him, but the Government did not comply with her wishes.

Yours sincerely,
Richard K. Ullman.

26 Fairway,
Northfield,
Birmingham, 31.

BRITISH GOVERNMENT PUBLICATIONS

Most of the British Government publications listed below are of parliamentary or constitutional interest. All Government publications, including Hansard *for the House of Lords and House of Commons (daily parts, weekly editions, or bound volumes) can be ordered through the Hansard Society.*

Bechuanaland Protectorate. Succession to Chieftainship. (Cmd. 7913.) 3d.

Boundary Commission for England. Report with respect to Birmingham. (Cmd. 7787.) 2d.

British Electricity Authority. Report and Accounts, 1947-9. 5s. 6d.

Consolidation Bills, 1948-9. Seventh Report by the Joint Committee. (H.L. 29-VI, 184, H.C. 271.) 6d. Eighth Report. (H.L. 29-VII, 185, H.C. 270.) 9d. Ninth Report. (H.L. 29-VIII, 202, H.C. 284.) 3d.

Election Commissioners Bill. (H.L. 190.) (H.C. 217.) 4d.

Electoral Registers Bill. (H.C. 205.) (H.L. 206.) 3d. Amendments (H.L. 206a.) 3d. Lords Amendments. (H.C. 222.) 3d.

Estimates, Select Committee on. Twelfth Report. (H.C. 282.) 2s. 6d. Thirteenth Report. (H.C. 283.) 10s. 6d. Fourteenth Report. (H.C. 296.) 4d. Fifteenth Report. (H.C. 305.) 2s. Sixteenth Report. (H.C. 306.) 4s. 6d. Seventeenth Report. (H.C. 313.) 3s. Eighteenth Report. (H.C. 314.) 4s. Nineteenth Report. (H.C. 315.) 5s. 6d. Twentieth Report. (H.C. 316.) 1s.

Gold Coast. Report of the Committee on Constitutional Reform. (Col. No. 248.) 2s. Statement by His Majesty's Government. (Col. No. 250.) 4d.

House of Lords Offices. Fifth Report. (H.L. 189.) 1d.

House of Lords Standing Orders relative to Private Bills. (H.L. 179.) 2d.

Justices of the Peace Bill. Amendment. (H.L. 114d.) 1d. Amendments. (H.L. 114e.) 1d. Amendments. (H.L. 114f.) 3d. Marshalled List of Amendments. (H.L. 114**.) 6d. Second Marshalled List of Amendments. (H.L. 114††.) 6d. Third Marshalled List of Amendments. (H.L. 114‡‡.) 6d. Fourth Marshalled List of Amendments. (H.L. 114§§.) 4d. As amended in Committee. (H.L. 178.) 1s. 3d. Amendments. (H.L. 178a.) 4d. Amendments. (H.L. 178b.) 1d. Amendments. (H.L. 178c.) 4d. Amendments. (H.L. 178d.) 1d. Marshalled List of Amendments. (H.L. 178**.) 6d. As amended on re-commitment. (H.L. 188.) 1s. 3d. Amendments. (H.L. 188a.) 3d. Amendments. (H.L. 188b.) 1d. Marshalled List of Amendments. (H.L. 188**.) 4d. Commons Amendments. (H.L. 220.) 3d. As amended. (H.C. 220.) 1s. 6d.

Law Reform (Miscellaneous Provisions) Bill. Amendments. (H.L. 139b.) 1d. Marshalled List of Amendments. (H.L. 139**.) 2d. Second Marshalled List of Amendments. (H.L. 139††.) 2d. As amended. (H.L. 180.) 3d. Amendment. (H.L. 180a.) 1d. Amendments. (H.L. 180b.) 2d. Marshalled List of Amendments. (H.L. 180**.) 2d. Lords Amendments. (H.C. 213.) 2d. Commons Amendment. (H.L. 214.) 1d.

Local Government and the Civil Service in the British Zone of Germany. A Report on some methods used. (Cmd. 7804.) 3d.

Local Government Boundary Commission (Dissolution) Bill. (H.L. 191.) 1d. Amendment. (H.L. 191a.) 1d.

Local Government Manpower Committee. First Report. (Cmd. 7870.) 6d.

Parliamentary Constituencies: England, Wales and Northern Ireland. (Cmd. 7840.) 4d. Scotland. (Cmd. 7841.) 2d.

Privileges, Report from the Committee of. (H.C. 261.) 2d.

Public Accounts, Committee of. First, Second and Third Reports, together with the Proceedings of the Committee, Minutes of Evidence, Appendices, and Index. (H.C. 104-1, 186-1, 233-1.) 14s. Special Report. (H.C. 304.) 2d.

Public Bills. Return for 1948-9. (H.C. 333.) 3d.

Representation of the People Bill. Amendment. (H.C. 182.) 1d.

Scottish Estimates. Minutes of Proceedings of the Scottish Standing Committee. (H.C. 220.) 4d.

Statute Law Revision Bill. (H.L. 218.) 3s. 6d.

Statutory Instruments, Select Committee on. Minutes of Proceedings. (H.C. 263.) 4d. Minutes. (H.C. 274.) 2d. Special Report. (H.C. 281.) 3d. Minutes. (H.C. 289.) 2d. Special Report. (H.C. 281.) 3d.

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NEW VENTURE

We have received a copy of the first issue of *MP: the Month in Parliament.* (Vol. I, No. 1, April 1950). This is published by Tower Bridge Publications Ltd., Grays Inn Chambers, 20 High Holborn, London, W.C.1, and costs 1s.

REVIEWS

The Historical Development of Private Bill Procedure and Standing Orders of the House of Commons. By O. Cyprian Williams. H.M. Stationery Office. Vols. I and II. 17s. 6d. each.

The private bill procedure of the House of Commons, says Sir William Holdsworth in his *History of English Law*, "is a unique method of using the legislative power of the state. It is a method which combines the power to act freely in the interests of the state which is possessed by the legislator, with the duty to weigh the comparative merits of the cases of the promoters and opposers which is imposed upon the judge". But although Clifford in his classic *History of Private Bill Legislation* made excursions into the domain of procedure, and F. H. Spencer devoted a chapter of his interesting and valuable monograph on the subject of local acts, *Municipal Origins*, to private bill procedure between 1700 and 1835, the history of the evolution of what has been described as "a piece of constitutional machinery which could never have been devised by a person who was constructing a code of constitutional law on logical *a priori* principles" has hitherto remained unwritten. By filling this gap, Dr. Williams has deserved well of all who are interested in legislative procedure and methods.

Although, as Dr. Williams shows, a number of Standing Orders relating to private bills were made from 1685 onwards, it was not until towards the end of the third quarter of the eighteenth century that the increase in the volume of private bills and the change in the objects for which parliamentary powers were sought, compelled the House of Commons to turn its attention to the question of the suitability of private bill procedure and to make the first of the series of reforms which have resulted in the system we know today. In 1825 the first attempt was made to reform the constitution of private bill committees. By 1848, Dr. Williams says, "in all

but one or two essentials the code of Standing Orders had assumed the form and context which it has today". By 1876 the formative period had come to an end. The subsequent history of private legislation procedure, as he says, "became more concerned with detail than with broad measures of experiment and reform".

Under the existing procedure private legislation is delegated almost completely to committees. The first step in this direction was not the result of any deliberate decision on the part of the House. In the eighteenth century the functions of a committee on a private bill were much the same as those of a committee on a public bill today, i.e., to consider the clauses of the bill and make whatever amendments they think fit. Parties who objected to particular provisions in the bill might be heard in support of their objections, but objections to the principle of the bill could not be entertained by the committee. Such objections could be entertained only by the House. When objection was taken to the principle of the bill by parties injuriously affected, such parties were heard in person or more usually by counsel at the bar of the House on the second or third reading, or when the report for the committee on the bill came up for consideration. Early in the nineteenth century pressure of business forced the House to give up hearing parties. Dr. Williams concludes from a comparison of treatises by Sherwood and other practitioners that the practice died out between 1820 and 1830. Reference to the Journals of the House suggests that it ceased considerably earlier. The last instance of counsel being heard at the bar in opposition to a private bill seems to have occurred in 1803.

The unwillingness of the House to afford parties injuriously affected by private bills an opportunity of attacking the principle of the bill on second reading, encouraged committees to amplify their jurisdiction and allow opponents to impugn the principle of the bill in committee. It is this change in practice and not, as Dr. Williams says on page 57, that "by which the committee first considered the preamble and the counsel for the promoters opened the proceedings by putting forth the case for the preamble", that Sherwood

defends. So long as the rule that opposition to the principle of a private bill could not be entertained by the committee remained in force, it mattered little whether the promoters or the opponents began. It is a pity Dr. Williams did not think it necessary to ascertain what Sherwood says in the first edition of his treatise, published in 1828, six years earlier. In 1830 the Speaker is found still ruling that "when objection is made to the whole bill, the committee cannot hear the petitioners because the House will not delegate to a committee the power of deciding upon the rejection of a measure the principle of which it has already adopted in the second reading", and that "the House in committing a bill, adopts the principle and merely sends to a committee to look to its defects for the purpose of seeing if it operates with injustice against any party." It is difficult to believe that the change in practice can have taken place between 1830 and 1834. On the other hand a major change in practice such as this could hardly have occurred without the Speaker becoming aware of the fact. Possibly there were at that time two doctrines, one held by the Speaker and the more conservatively minded practitioners such as the author of *Practical Instructions on the Passing of Private Bills through both Houses of Parliament*, published in 1827, a work to which Dr. Williams makes no reference, the other held by Sherwood and acted upon by committees.

It was under colour of discharging the duty of examining the allegations of the bill that committees on private bills extended their jurisdiction. The preamble of every private bill concludes with a recital that the measure is expedient. By treating this allegation as a statement of fact which required to be proved committees drew the principle as well as the provisions of the bill into their net. It would be interesting to know what the doctrine on this subject was in the eighteenth century. It may be that the truth of the allegations was considered to be established by the act of the House in reading the bill a second time. This supposition derives confirmation from the fact that (as far as the present reviewer is aware) there is no instance of a committee on a private bill reporting that the

allegations contained in the preamble of the bill had not been proved to their satisfaction earlier than 1805. Whatever may have been the case where the bill was not opposed, proving the preamble was never a mere formality when the bill was opposed. It is true that committees did not always discharge their duty of discriminating between, and adjudicating upon, the conflicting claims of promoters and opponents in a judicial frame of mind to judge from the letter, printed by Mr. and Mrs. Hammond in *The Village Labourer*, in which George Selwyn describes his experiences as chairman of "a committee absolutely of Almack's", which considered an opposed enclosure bill in 1775. It is also true that the statement in *The Liverpool Tractate*, quoted by Dr. Williams, that "if the point is litigated", the examination of evidence to prove the preamble "may probably be very tedious *especially if the parties have money enough to throw away in feeing counsel*", may be read as implying that it was a foregone conclusion that the committee would find the preamble proved.

It was some time before the House acquiesced in the usurpation by committees of the power to decide upon the principle of the bill. On the first occasion when a committee took it upon themselves (as May says in his first edition) "practically to reverse the judgment of the House", as given on the second reading of the bill, the House recommitted the bill to the committee who, after allowing a decent interval to elapse, reported that they had re-examined the allegations of the bill and now found them to be true. The first instance of the House acquiescing in a report by a committee that the preamble had not been proved seems to have occurred in 1810, but the present reviewer has not succeeded in finding another until 1819. It would be interesting to trace the gradual usurpation by committees of the functions of the House from the relevant entries in the Journals.

The main adverse criticism of Dr. Williams's work must be that it is a mine of information rather than a survey of the historical development of private bill procedure. If he had sifted the more important changes in procedure from the mass of detail, the reader would have gained a clearer idea of

the process by which private bill procedure as we now know it was gradually evolved. There is a good deal to be said for the plan which Sir William Holdsworth followed in his *History of English Law*, of describing the defects from which private bill procedure suffered at the end of the eighteenth and the beginning of the nineteenth century before dealing with the reforms by which these defects were remedied. Sir William Meredith's tale of how he once passed a committee room "where only one member was holding a committee, with a clerk's boy" would have borne telling again. So would Lord Thurlow's animadversions in 1781 on the perfunctory manner in which committees on printed bills discharged their duties. "It was not unfrequent," he said, "for them to decide upon the merits of a bill which would affect the property and interests of persons inhabiting a district of several miles in extent in less time than it took him [as Lord Chancellor] to determine upon the propriety of issuing an order for a few pounds by which no man's property could be injured." Lastly, while a purely chronological narration of events, even if practicable, would have been less suitable for the purposes of the survey than the method employed by the author, chronology seems at times to have been needlessly sacrificed to the exigencies of a treatment by topics, as, for instance, when the evolution of the Private Legislation Procedure (Scotland) Act of 1899 is described before any account has been given of the appointment of the Police and Sanitary Committee in 1882. But even if the book is not easy reading, that does not detract from its value as a work of reference.

Besides those already mentioned two or three other omissions should be noted. The reader is not told that the Standing Order made in 1699 requiring the chairman of a committee on a private bill, when reporting the bill, to acquaint the House that the allegations of the bill had been examined, though general in terms, originally applied only to estate bills and similar measures. Not until 1726 was the rule applied to private bills of all kinds. Nor is any reference made to the incident which, according to Mr. and Mrs. Hammond, was the cause of the Standing Orders dealing with

enclosure bills being made in 1774. The reader is not told that the order first made in 1937 providing that, in the case of an opposed local authority bill containing local legislation clauses, the committee on the bill, when considering such clauses, shall have the assistance of the Speaker's Counsel, has been a dead letter.

Slips must be expected in a work of this type, but to confuse the Mr. Bright who served on a select committee in 1825, with John Bright, then only fourteen years old, is one which ought to have been avoided. On page 187 members of the parliamentary bar are wrongly described as "parliamentary counsel". On page 12 the term "rules of court" and on page 68 the expression "*ex parte*" are misused. Less care seems to have been taken over the account of the existing private bill procedure than over the remainder of the work. Thus on page 7 the reader is told that "compliance with the orders contained in Chapter II [of the Standing Orders] so far as applicable must be proved before the Examiner in the case of all private bills except those in regard to which the Chairman of Ways and Means (or the Chairman of Committees in the House of Lords) [has] certified that the bill is in the nature of a personal bill and that these Standing Orders should not be applicable". On page 17, however, he learns that "under S.O.3 certain bills may be certified *by the Speaker* as being of such a nature that Standing Orders 4-68 should not be applicable." Neither statement is correct. What Dr. Williams means when he says on page 8 that the Standing Orders "are part of the public law" is hard to conceive.

The second volume contains historical notes on the Standing Orders which will obviate much research by officers of the House and practitioners engaged in promoting or opposing private bills. Their practical utility is, however, somewhat diminished by the fact that they are based on the Standing Orders as they were in 1942. The reader who wishes to know the history of a particular order must begin by searching the table on pages 7-10 in order to discover the number of the corresponding pre-1945 order, which it may take him some time to do, as the existing Standing Orders are not arranged

in the table in numerical order. It would, as Dr. Williams says, have cost time and labour to adapt the notes to the revised text of 1945, but the revision of the Standing Orders carried out in that year was of such a fundamental nature that the time and labour would have been well spent.

L. A. ABRAHAM.

(Mr. L. A. Abraham, C.B.E., is Clerk of Private Bills in the House of Commons.)

Administrative Tribunals at Work. A Symposium edited by Robert S. W. Pollard. Published under the auspices of the Institute of Public Administration. Stevens. 17s 6d.

Administrative adjudication was one of the subjects of enquiry entrusted to the Committee on Ministerial Powers in 1929 and to that Committee it seemed the major threat against the Rule of Law, as constituting, in Dicey's words, an encroachment on the jurisdiction of the courts and a restriction on the subject's unimpeded access to them. Since then there has been a considerable change in public opinion and it is now generally accepted that the ordinary courts could not meet the requirements of the modern state.

In the second-reading debate on the Legal Aid & Advice Act, 1949, the Attorney-General said that there were approaching one hundred judicial or quasi-judicial tribunals outside the ordinary courts, and these did not include the domestic tribunals of professional bodies such as the Law Society's Disciplinary Committee. The courts have in fact never enjoyed a monopoly; arbitration, for instance, has for centuries been welcomed as an alternative to litigation by the commercial community, and the habit of self-discipline which exists among bodies of persons engaged in the same occupation has a long history.

The argument for administrative tribunals is, shortly, that the cases which come before them cannot suitably be tried in the ordinary courts because they require specialized knowledge, or because the procedure in the ordinary courts is too cumbersome, slow, and expensive in relation to the matters in question. In certain cases, too, the discretionary application of government policy is involved and in these the decision must be left

to the Minister responsible, subject, possibly, to certain minimum requirements of fairness upon which the courts will insist.

The Committee on Ministers' Powers endeavoured to distinguish between judicial, quasi-judicial, and administrative functions, but these over-lap and it is difficult to draw a line between them. It is clear that the work of many of the administrative tribunals is not entirely administrative and to this extent the name is a misnomer; it was, for instance, made clear by the Minister of Health in the debates on the Local Government Act, 1948, that the new local valuation courts set up under that Act were to be judicial as distinguished from administrative bodies. It appears, however, that the name has come to stay as denoting not only administrative tribunals in the strict sense but almost any tribunals other than the ordinary courts.

Like so many other English institutions, administrative tribunals have grown up in a haphazard fashion and there is a remarkable degree of variety in their constitution, practice, and procedure. Some of them sit in public and others in secret; in some cases there is a right of appeal and not in others; and in some cases the tribunal is not obliged to give reasons for its decisions. Dr. W. A. Robson in his *Justice and Administrative Law* has suggested some principles by which administrative tribunals can be tested, and one of the objects of Mr. Pollard's symposium is to consider the working of a variety of tribunals in the light of these principles. The seven essays which comprise the volume necessarily deal with only a few of the great number of different tribunals, but those which have been chosen well illustrate their diversity which, generally speaking, has no logical justification. In his introduction Mr. Pollard suggests some rules, based on Dr. Robson's principles, as a sort of lowest common denominator for all administrative tribunals, which are likely to meet with general acceptance. One of these is that an applicant should have an unfettered choice of representative, and Mr. Pollard draws attention to the fact that the Rushcliffe Report proposed that its scheme for State-aided legal advice and assistance should apply to representation before administrative tribunals. The Legal Aid and

Advice Act, 1949, does not embody this recommendation, but administrative tribunals can be included by regulation among the tribunals before which applicants can be assisted.

The seven contributors to the book have a wide variety of knowledge and experience, and the symposium may be recommended as a useful and interesting guide to the subject, both to those who are particularly concerned with it and to the general reader; as Dr. Robson writes in his Foreword, it will help to fill a serious gap in the literature of administrative law.

KEITH MILLER JONES.
(*Mr. Keith Miller Jones, M.A., LL.B., is the Honorary Solicitor of the Hansard Society.*)

A Report on some methods used to assist Local Government and the Civil Service in the British Zone of Germany. His Majesty's Stationery Office. (Cmd. 7804). 3d.

This Report summarizes one of the most important, creditable, and, let us hope, enduringly valuable pieces of work Britain has done in Germany during the Occupation. In aiming at "the eventual reconstruction of German political life on a democratic basis" the Potsdam Agreement provided for "the restoration of local self-government on democratic principles and in particular through elective councils". The initiation of this formidable task fell to our Military Government. As Military Government found, the task went beyond the mere restoration of the elected councils for which Hitler had substituted his party nominees. The elected councils established in 1808 by von Stein, the Prussian Minister of State, had largely lost the character of organs of local-self government, even before the Nazi regime, under the impact of the authoritarian climate which spread throughout Germany in the nineteenth century. An Executive Committee called the Magistraat, comprised of both elected representatives and officials, had developed a substantial responsibility, not only for administration, but for many, and perhaps the major, issues of policy arising in the work of the councils. This body was presided

over by the senior official, who thus became implicated in party politics and was often appointed on party loyalties. The senior official was himself an outposted agent for some decentralized State functions. The State authorities used his services and indeed those of other council officials very freely in every direction, and tended to treat the Council's officials as State servants. The officials were inclined to look for their orders to the State and its intermediate agencies, rather than to their own councils. The local councils had gradually been deprived of all substantial sources of revenue of their own, and existed on doles from central revenues. They allowed their officers a large freedom in spending, once the budget was passed. In short, the spirit as well as the form of German local government reflected, on the one side, the dominance of the local official, and on the other, the prostration of the local authority before the State.

In the new arrangements introduced by the Military Government in the initial stage of occupation, the Magistraat did not reappear but, as the White Paper indicates, the old conceptions tended to reassert themselves, and to permeate the new forms, when the German authorities were given primary responsibility for local government in 1947. Much responsibility was delegated to a "Main Committee". The elected councillors on it, "as much through habit as through apathy", were content to leave even policy decisions to the officials. The officials, particularly the older ones who had been Burgomasters and who resented the loss of their old powers, were inclined to exploit this position and "arrogate to themselves once more the task of formulating policy".

It was realized that much education was necessary, and the purpose of the White Paper is to outline the measures taken. Steps were taken in discussions with the Germans to emphasize the following principles:—

(i) That elected representatives should decide policy while officials should give advice and implement decisions.

(ii) That the policy recommended in Committee should be subject to public debate in Council.

(iii) That sufficient responsibility over finance, including

revenue, should be given to local authorities in order to make local self-government a reality.

(iv) That officials should be non-political and that recruitment and promotion should be on the basis of suitability for the position, and not because of party political sympathy.

(v) That the local official should be responsible to his own authority, owing no allegiance to superior levels of government.

Discussions were followed up by the extension to German local government personnel of friendly contacts which could demonstrate how such principles were working in practice elsewhere, including Britain. British lecturers visited Germany. Later, a local government school for German personnel was established at Hahnenklee in the Hartz Mountains; and for periods in the summer, conferences were held here at which lecturers drawn from both the elected and official ranks of local government in Britain and other Western democracies met German local government councillors and officers on equal terms, in a sociable atmosphere, and discussed the principles of democratic local government, as well as the practical administrative difficulties of the Germans. In the last year or so the work has been carried on to a still more valuable plane by visits of German councillors and officers to Britain, where they have been "placed out" among English local authorities to see our own system at work and to make contacts with our own local government personnel.

Similar measures have been taken to assist German civil servants.

The White Paper concludes that while there is still much to be done—and work of this kind cannot be expected to show immediate results—there is increasing evidence that what has been done already has had a marked effect. It will, let us hope, influence in the right way the new legislative codes for local government which the West German Government is now settling.

J. H. WARREN.

(Mr. J. H. Warren, M.A., D.P.A., is General Secretary of the National Association of Local Government Officers.)

Irlande du Nord. Par Jean Chérioux. Cahier no. 12 de la Fondation Nationale des Sciences Politiques. Librairie Armand Colin (103, boulevard Saint-Michel, Paris, 5).

The Ecole Libre des Sciences Politiques, under its great founder, Emile Boutmy, who wrote a very able work on the British Constitution, attained deservedly a high reputation as a school for the preparation of Civil Servants, and especially diplomatists. It has now changed its name, and become the Fondation Nationale des Sciences Politiques, and gives Diplomas which are much sought after.

By writing a thesis in addition to the ordinary written examination, it is possible for a candidate to get a number of extra marks, and by this means the Professors encourage their students to do original work.

Three of these theses have been included in the present volume, one dealing with Northern Ireland, the second with the State of Connecticut, and the third with New York. The article on Northern Ireland, consisting of some eighty-six pages, has been contributed by a candidate of the name of Jean Chérioux. The author had evidently the laudable intention of publishing a scientific study on the Government and Constitution of Northern Ireland. I cannot, however, agree with Professor Puget, who has written the Preface, that the writer has known how to maintain "sufficient objectivity." He seems to be totally lacking in the necessary historical background, otherwise he surely would not have said (p. 26) that the people of Ulster are faithful to the descendants of William of Orange. This would seem to imply that he really thought that the monarchs of the House of Hanover derived their claim to the throne from a descent from William of Orange. Then again, a little research would have taught him that Tim Healy, whom he describes as one of the first Presidents of Ireland, and a Protestant, was never President of Ireland but one of the last Governors-General: to say that he was a Protestant is almost enough to make this devout Catholic turn in his grave.

It is no doubt difficult for a young student to weigh historical evidence; but it is surprising to find him quoting pamphlets which are notoriously partisan as if they were serious historical

works. It is untrue to say that "de véritables massacres" were carried out by a body, more or less irregular, of 6,000 Special Police (p. 26).

To show the prejudiced position which the author has taken up it is sufficient to quote the statement that the policy of Great Britain has always been to adopt the maxim "Divide in order to reign", and just as she made use for this purpose of the religious antagonism of Mussulmans and Hindus, so in the same way she has carefully kept up the opposition between Orangemen and Nationalists.

There are mis-statements of fact which cannot go uncorrected, such as that the Ulster Exchequer finds the greatest difficulty in meeting all its expenses, and the London Government is compelled to come to its aid by granting subsidies. The facts are that, since the Parliament of Northern Ireland was set up during 1921-22 down to 1949, Ulster's Imperial contribution was no less than £237,237,344, and after deducting payments to Ulster from the British Exchequer for various purposes the net Imperial contribution was no less than £195 million.

M. Chérioux rightly gives in his Bibliography the Commentary of Sir Arthur Quekett on the Constitution of Northern Ireland; but he does not seem to have consulted it with sufficient care, otherwise he would never have said that the Members of the Government of Northern Ireland can only sit in the House (*i.e.*, either the Commons or the Senate) of which they are members. As a matter of fact it is one of the great advantages of the Ulster Constitution that a Minister can speak in either House. The Marquess of Londonderry was able to introduce his famous Education Bill to the House of Commons, of which he was not a member.

It is deplorable that a work of this kind, which might have been a serious study, was not submitted to some Irishman, either from the North or the South, who could have eliminated some of these gross errors, several of which I have no space to mention.

D. L. Savory

(*Professor Savory is the Member of Parliament for Antrim South. He was for more than thirty years Professor of French Language and Romance Philology at Queen's University, Belfast, and represented the University for ten years at Westminster.*)

The Dominion of Ceylon. By Sir Frederick Rees. University of Nottingham. 1s. 6d. (The twenty-second Cust Foundation Lecture.)

The Constitution of Ceylon. By Sir Ivor Jennings. Oxford University Press. 16s.

Ceylon has known many invaders in her history and each has contributed something to the variety and richness of the civilization of the island. From India came the Hindu and Buddhist religious and social systems; from Portugal came Roman Catholic Christianity; from Holland came Roman-Dutch law and a diligent attitude to trade and administration; from Britain came the institution of parliamentary government.

After the British conquest in 1796 Ceylon was administered by the East India Company as a dependency of Madras. In 1798 this arrangement was modified and the island was administered jointly by the East India Company and the Imperial Government. Then in 1802 dual control was ended and Ceylon became a Crown Colony, a status which lasted until the island became an independent state within the Commonwealth in 1948.

Until 1833 all executive, legislative, and judicial authority was vested in the Governor who had a council of senior officials of his own choosing to advise him, though he was not bound by the advice he received. This system was strongly condemned by Colonel Colebrooke, who headed the Commission which began its investigation of the administration of Ceylon in 1829. Colebrooke recommended that the advisory council should become an Executive Council, and that a Legislative Council should be created. He advocated the novel principle that membership of the legislature should not be confined to public officials but should include "any respectable inhabitants, European or Native". He maintained that "the people are entitled to expect that their interests and wishes may be attended to, and their rights protected".

Such views did not commend themselves to the British officials in Ceylon; and it is one of the ironies of history that Sir Robert Wilmot-Horton, who in 1823 as Under-Secretary

for War and the Colonies had persuaded the House of Commons to approve the sending of the Colebrooke Commission to Ceylon, was now Governor of Ceylon and was complaining to the Colonial Office in London of Colebrooke's "crude and impractical" proposals. He was supported in his views by his predecessor as Governor, Sir Edward Barnes, who held that "black faces and white can never be so amalgamated together in society as to be on an equal footing". Barnes objected to ordinary people, whether European or native, having any share in the government of the island on the ground that "such a form of Government must lead to discussion and I hold it to be a maxim of government that the executive authority should never be engaged in personal discussions".

In spite of these misgivings in high places, Colebrooke's proposals were put into effect in 1833. An Executive Council, consisting of five officials, was created: this body remained entirely official in character until after the first world war when three unofficial members were added. A Legislative Council was created, consisting initially of the Governor and nine officials. This form of legislature was maintained for ninety years, though unofficial nominees of the Governor were added from time to time. In 1920, for the first time, the unofficial members—of whom half were nominated by the Governor—outnumbered the officials, and in 1923 the principle of election was extended so as to give the elected members a small majority.

In 1931 this orthodox form of government was abandoned. In accordance with the recommendations of a Commission of Enquiry (the Donoughmore Commission), a novel constitution was introduced, modelled—it is often said—on the system of English county government. In the place of Executive and Legislative Councils a new and substantially elective body was created known as the State Council. This body combined executive and legislative functions. It was divided into a number of committees each responsible for some function of government: the chairman of each committee was in effect a Minister in charge of a department, and the chairmen meeting together acted as a cabinet. This bold and

interesting experiment in colonial government was not a success, and following the visit to Ceylon in 1944-5 of another Commission of Enquiry (the Soulbury Commission), Ceylon returned to a more orthodox constitution.

The Soulbury Commission had three members. The Chairman, Lord Soulbury, is now Governor-General of Ceylon. Mr. F. J. (now Sir Frederick) Burrows subsequently became Governor of Bengal. He was formerly President of the National Union of Railwaymen and it is said that when a distinguished army officer once asked him if he had done any hunting and shooting at home, he said he had spent more time shunting and hooting. The third member of the Soulbury Commission, Mr. J. F. (now Sir Frederick) Rees, Principal of the University College of South Wales, delivered the twenty-second Cust Foundation Lecture at the University of Nottingham in May, 1949. He chose as his subject "The Dominion of Ceylon", and the lecture has now been published in expanded form. It is a useful survey of recent constitutional developments in Ceylon although the treatment of the early nineteenth century period is a trifle perfunctory and in some respects inaccurate. It is stated, for example, that from "1796 to 1802 the administration was exercised by the East India Company from Madras": in fact this arrangement ended in 1798, and until 1802 Ceylon was administered jointly by the Crown and the East India Company. The statement that "the chiefs, who had differences with their king, ceded the Kandyan Provinces to the British Crown by the Convention of 1815" gives a misleading impression of what happened. The king had indeed become estranged from some members of the Kandyan nobility, but the events of 1815 were precipitated by a barbarous attack on some British subjects. The Governor decided to invade Kandy, but no resistance was offered and the chiefs agreed to the cession of territory. Two years later, however, Kandy was in revolt and the territory was only conquered "after severe British losses had been incurred and the Kandyans had been treated with a severity difficult to justify" (Report of the Donoughmore Commission, 1928).

Sir Ivor Jennings, Vice-Chancellor of the University of Ceylon, acted as unofficial adviser to two leading Ceylonese politicians, the Rt. Hon. D. S. Senanayake and Sir Oliver Goonetilleke, who were responsible for the negotiations which preceded Ceylon's attainment of independence within the Commonwealth. Mr. Senanayake became the first Prime Minister of independent Ceylon, and Sir Oliver is Ceylon's High Commissioner in London.

Sir Ivor has written an excellent analysis of the present Constitution of Ceylon and has described briefly the events which led up to its adoption. The manuscript was completed in 1947 and revised early in 1948, but unfortunately its publication did not take place until 1950. The delay has meant that certain passages, such as those dealing with the constitutional position of Eire (p. 27 *et seq.*) and citizenship and nationality in the Commonwealth (p. 31), have been outdated by events. Sir Ivor remarks in his preface that "the history of the negotiations [for independence] has been written and will, I hope, be published at a suitable opportunity". All who are interested in constitutional matters will await the publication of this history with keen anticipation.

Ceylon today enjoys a parliamentary system deriving from the Westminster pattern. The lower house consists mainly of members elected for territorial constituencies by majority voting: the upper house consists equally of members elected by the lower house by proportional representation and members chosen by the Governor-General. The cabinet is responsible to the lower house. The present Government is a coalition of parties and persons ranging from moderate socialist to progressive conservative, and the opposition consists almost entirely of three rival Communist parties.

The constitutional structure is described by Sir Ivor, who supplements the facts with shrewd comments and observations of his own. More than half the book is taken up with constitutional documents, the more obscure passages being explained. Sir Ivor does not conceal his dislike of the Donoughmore Constitution, and he takes a fatherly interest in the new Constitution which he did so much to mould. He is oddly

obsessed with Sir William Harcourt, ascribing to him Tierney's dictum that it is the duty of an opposition to oppose and Lord Morley's description of the Prime Minister as the keystone of the Cabinet arch.

SYDNEY D. BAILEY.

Introduction to Indian Administration. By M. R. Palande. Fourth edition. Oxford University Press. 3s. 6d.

Primer of Indian Administration and the British Constitution. By M. R. Palande. Seventh edition. Oxford University Press. 1s. 6d.

India, Pakistan, and the West. By Percival Spear. Oxford University Press. 5s.

India. By C. H. Philips. Hutchinson. 7s. 6d.

The contents of all the four volumes under review, particularly the two by Professor Palande, have been out-dated by the revolutionary changes that have taken place on the sub-continent of India since August, 1947, and the birth of the Dominion of Pakistan and the Republic of India, though Dr. Spear and Dr. Philips have tried to catch up with the events. Professor Palande's *Introduction to Indian Administration* gives a readable account of the administrative structure and the functions of different organs of government under the Government of India Act, 1935. After a short account of Indian constitutional development, the volume goes on to deal with the structure and functions of the Home Government for India. There is an interesting section on the different forms of control exercised by Parliament from time to time over Indian administration. There are then sections on the structure and functions of the central government in India and the Provinces under the 1935 Act. The volume is a good text-book on the subject and useful also to the general reader. The *Primer of Indian Administration and the British Constitution* by the same author gives a simple and elementary description of the constitutional structure of the Governments of India, before the introduction of the present Constitution, and the British Constitution.

Dr. Spear's volume is No. 211 in the Home University Library. It is written in a very lucid and readable style and the author shows a complete grasp, if not always an understanding, of the complex problems of India and Pakistan. He gives a fairly full analytical description of the country—which he calls "a land of problems"—and then goes on to give a quick bird's-eye-view of her history down the ages. He narrates how the British discharged the great task of the establishment of order and the organization of law in the anarchy that had resulted after the breakdown of the Mughal central authority, by organized police, a legal system and a judiciary, a system of land tenure, a loyal army, and a subordinate Princely Order to rule two-fifths of the country as imperial agents. There is then a penetrating analysis of the economic system which the British evolved for India and the various forces which moulded it.

Dr. Spear states that, while in the sphere of politics the British deliberately constituted a positive system of power and in the realm of welfare introduced Western concepts and practices—while, of course, being scrupulous in not attacking, at least overtly, Indian institutions—in the field of economic life they did not conceive of any fixed system, nor had they any ideas to guide them. Unfortunately, the British Government both in the United Kingdom and India did not, and perhaps could not, appreciate that what was good for the United Kingdom was not necessarily good for India, which was in so many respects different from the mother country. The result was that "the same liberty which had proved the secret of British industrial prosperity had converted India into a colonial economy". Dr. Spear continues: "What has been condemned as deliberate British policy was in fact the normal working of current economic ideas and inevitable British economic pressure. But its effect on the Indian mind was the same as if the motive had been calculated egotism. It fostered a sense of dependence and of frustration and provided the key argument for a belief in the British exploitation of India. What was a plan to have no plan appeared in Indian eyes to be a regular design to retard the country's progress."

In the sphere of social welfare interference was inevitable.

This was a mixed blessing to Indians, for while it put an end to such cruel social practices as *Sati* and female infanticide, the system of education as propounded by Macaulay threatened the very foundations of Indian intellectual and religious structure established ages ago. This brought to the fore the vital question: "What was to be India's attitude to the Western cultural invasion? Should it be accepted, rejected, or absorbed and synthesized?"

Dr. Spear analyzes the implications of this question in an illuminating chapter entitled "The Indian Response". He takes the view that the whole of modern Indian development is an ordered series of responses to a set of challenges presented by Western civilization. While this kind of interpretation may not explain every modern development in India, it no doubt contains a large measure of truth. The first response was military because it was through military power that the British conquered India. The next one was conservative, the supreme expression of which was the Mutiny. The third response was that of acceptance of Western ideas. Between the two extremes of conservatism and acceptance there was the orthodox response—the attempt to discover the secret of new life in India's own ancient heritage. Finally, there was the synthesis of the two cultures, Western and Indian, the work mainly of Raja Ram Mohan Roy and Sir Syed Ahmed Khan. Whether or not this synthesis is "the working faith of modern India" as the author opines, this solution emphasized that not all Western ideas were harmful to Indian culture.

Will this synthesis endure? The author examines how far certain features of Hinduism and Islam are consistent with Western conceptions, and he concludes that it is much easier for Islam than for Hinduism to accept and adapt itself to Western thought. Whether or not one agrees with the author's analysis of the problems of modern India, this is a highly thought-provoking volume and a worthy addition to the Home University Library.

The volume by Dr. Philips is in Hutchinson's University Library whose aim is stated to be "to provide popular yet scholarly introductions for the benefit of the general reader."

The volume covers more or less the same ground as Dr. Spear's, though it is more descriptive than analytical. Dr. Philips, unlike Dr. Spear, does not try to be objective and impartial. This has led him to such conclusions as, for instance: "The East India Company was certainly the strongest government that had ever ruled India; equally, though this has not always been appreciated, it was the most enlightened." Surely this is a sweeping statement and factually incorrect as there did exist strong and enlightened governments during India's previous history.

On page 17 of the volume there are two typographical errors. The name of the goddess of wealth is stated to be Nakshim instead of Lakshmi, and the name of the god of rain is given as Rudra instead of Indra.

M. S. RAJAN

(Shri M. S. Rajan, M.A., is Administrative Secretary of the Indian Council of World Affairs.)

Revista Española de Seguridad Social. Instituto Nacional de Prevision.

Entre Hendaya y Gibraltar. By Ramõn Serrano Suñer. Ediciones y Publicaciones Españolas, S.A.

El Liberalismo Doctrinario. By Luis Diez del Corral. Instituto de Estudios Politicos.

Por qué cayó Alfonso XIII. By Duque de Maura y Melchor Fernández Almagro. Ediciones Ambos Mundos.

"If I were asked to scrap everything but one in our parlialiamentary system"—a British politician said once to me—"I should retain *Question Time*". This saying kept creeping back into my memory as I read the four publications listed at the head of this review. The *Revista Española de Seguridad Social* is a publication of the *Instituto Nacional de Previsiòn*, one of the public, yet autonomous, institutions created by the monarchy in its most enlightened phase, which, unlike other less fortunate ones, has weathered the political storms of present day Spain. Apart from a number of items of concrete information, it prints three competent articles, one in particular, by that veteran Catholic authority Professor Severino Aznar. The review and its sponsor are a good reminder of the considerable amount of legislation

devoted by the present regime to social security; but it is here that our British parliamentary friend's dictum comes in: what does actually happen behind this legislation in the absence of the indiscreet questions M.P.s are apt to put?

Needless to say the same applies to foreign affairs, as the next item on the list suggests. Señor Serrano Suñer, General Franco's brother-in-law, was the Caudillo's Home Secretary before he became his Foreign Secretary; and in both his functions he left the reputation of a fox who fancied himself a lion. The book is not written for the sake of scientific history. Its aim is twofold: to prove that General Franco's foreign policy was excellent while Sr. Serrano Suñer was in charge of it, but not before or after; and to disprove that Sr. Serrano Suñer was pro-nazi or pro-fascist. It fails on both counts. The Falangist Foreign Secretary was by no means always wrong or always inept; far from it; but the foreign policy of a responsible country should never be delivered into the hands of one or two men. Question Time, again. A parliamentary system that gets out of hand may, to be sure, do much harm in foreign affairs; but the golden rule in these matters should be: *public strategy and private tactics*.

Item 3, is without doubt the most distinguished of the list from the international point of view. It seems to have been conceived as a study of "doctrinarian" liberalism in Spain; but in the process of its gestation the author became more and more immersed into the French origins of his subject; so that, in the end, a book of 600 pages came to be written out of which 400 are devoted to Royer-Collard and Guizot and only 200 to Donoso Cortés, Alcalá Galiano and Cánovas. It is an excellent study of a period of European political thought not as well studied as it deserves. The author is well qualified by both his historical and his philosophical background to deal with the issues raised; and his personal standpoint seems to be both well balanced and discreetly held. The problem which Royer-Collard and Guizot had to tackle in 1814 and in 1830 was chiefly how to ally the traditional force of the eighteenth century monarchy with the progressive requirements of the nineteenth century: the two trends had to be blended in a

consistent political philosophy; and they had to be balanced in a relatively peaceful day-to-day policy. The author skilfully describes the two processes in their European setting, under the influence of German theory and of British practice.

The wave of revolutions which swept over Europe in 1848 put an end to that phase in France; but in Spain events similar to those of 1830 took place in 1875, and the Guizot of Alfonso XII was Cánovas. The author's portrait of Cánovas is as well balanced as those he draws of his French predecessors, if somewhat hastier. This supreme architect of the Spanish Restoration, the resolute head of a Conservative party, was nevertheless a thoroughly liberal and parliamentary spirit, a "doctrinarian" in the best historical sense of the word.

This means, among other things, that Cánovas was no readier than Royer-Collard and Guizot had been to admit that sovereignty could reside in the people. For Cánovas, *both* the Cortes and the King represented the nation, and thus the monarchy was for him an *essential* part of the country.

It is here that the last book in the list comes in; for it seeks to describe why the monarchy fell in 1931. Fundamentally the book is the work of the Duke of Maura, who sought the collaboration of his colleague to guard against possible bias on his part since one of the main characters in the story is his own father, Don Antonio Maura. Cánovas was also "Don Antonio", *the* "Don Antonio" of Alfonso XII, as Maura was *the* "Don Antonio" of the reign of Alfonso XIII. And, like Cánovas, Maura also was a doctrinarian in every, and not only in the best, sense of the word. His son has written a book full of interest for the Spaniard; marred for the outsider by too much minute anecdote. Taken in conjunction with the preceding work, the two form a complete study of the theory and practice of parliamentarianism in Spain and both confirm what we already knew; that, though not altogether blameless, it was not the King who was most to blame if that interesting experiment failed in Spain.

SALVADOR DE MADARIAGA

(Sr. Madariaga was Spanish Ambassador to the U.S.A., 1931-2; Spanish Ambassador to France, 1932-4; Permanent Spanish Delegate to the League of Nations, 1931-6).

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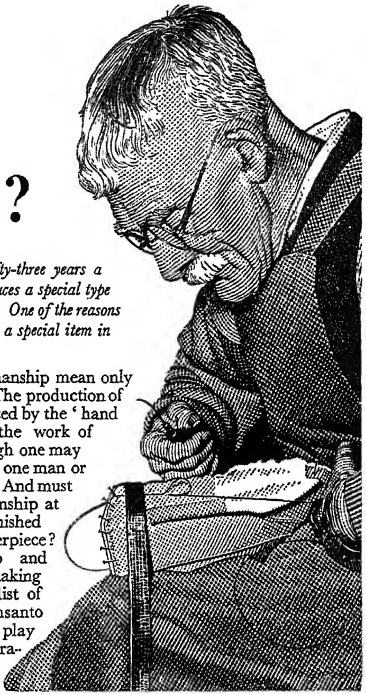

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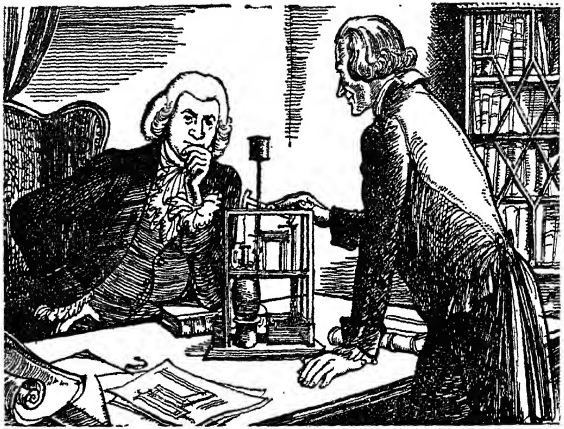

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